MONTANA LEGISLATIVE HISTORY

Chapter 299 ~~19~~ 2001

Bill H _____ S 377 Original bill & history ✓ C

H. Committee on Nat. Res.		S. Committee on Nat. Res.	
Hearing Date(s) 3-19	✓ C	Hearing Date(s) 2-12	✓ C
3-26	✓ C	2-17	✓ C
_____	___ C	[illegible]	___ C
_____	___ C	_____	___ C
Date Out _____	___ C		

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

BILL NO. 377

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA ENVIRONMENTAL POLICY ACT; PROVIDING TIME LIMITS FOR CONDUCTING ENVIRONMENTAL REVIEWS; PROVIDING DEFINITIONS; REQUIRING THAT ADMINISTRATIVE OR LEGAL CHALLENGES TO ACTIONS UNDER THE MONTANA ENVIRONMENTAL POLICY ACT BE BROUGHT WITHIN 30 DAYS OF A DECISION; AND AMENDING SECTION 75-1-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Environmental review procedure.** (1) An agency shall comply with this section when completing any environmental review required under this part.

(2) A project sponsor may, after providing a 30-day notice, appear before the environmental quality council at any regularly scheduled meeting to discuss issues regarding the agency's environmental review of the project. The environmental quality council shall ensure that the appropriate agency personnel are available to answer questions.

(3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the agency regarding an environmental review, the project sponsor may submit a written request to the agency director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow the agency to prepare for the meeting. If the issues remain unresolved after the meeting with the agency director, the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency and the board to prepare for the meeting.

(4) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental review process, an agency is subject to the time limits listed in this subsection (4) unless shorter time limits are otherwise provided by law. All time limits are measured from the date the agency receives a complete application. An agency has:

(a) 30 days to complete a public scoping process, if any;

(b) 90 days to complete an environmental review unless a detailed statement pursuant to

75-1-201(1)(b)(iv) is required; and

(c) 365 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).

(5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing that an extension is necessary and stating the basis for the extension. The agency may extend the time limit only one time, and the extension may not exceed 50% of the original time period as listed in subsection (4).

(6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(7) An agency may not assess fees to a project sponsor for any review that exceeds the original time period, regardless of whether or not the time period was extended.

(8) If an agency has not completed the environmental review by the expiration of the original or extended time period, the agency may not withhold a permit or other authority to act unless the agency makes a clear showing to the appropriate board, if any, that there is a substantial likelihood that permit issuance or other approval to act would result in the violation of a statutory or regulatory requirement. If the agency conducting the environmental review is also the project sponsor and if the agency has not completed the review by the expiration of the original or extended time period, the decision as to whether or not to proceed with the project must be made by the appropriate board, if any.

(9) An agency may only request that information from the project sponsor that is relevant to the environmental review under the provisions of this part.

(10) An agency shall ensure that the notification for any public scoping process associated with an environmental review conducted by the agency is presented in an objective and neutral manner and that the notification does not speculate on the potential impacts of the project.

(11) An agency may not require the project sponsor to provide engineering designs in greater detail than that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate board, if any, review an agency's request regarding the level of design detail information that the agency believes is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(12) An agency may, when appropriate, consider the cumulative impacts of a proposed project.

However, related future actions may only be considered when these actions are under concurrent consideration by any agency through preimpact statement studies, separate impact statement evaluations, or permit processing procedures.

NEW SECTION. **Section 2. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Appropriate board" means, for administrative actions taken under this part by the:

(a) department of environmental quality, the board of environmental review as provided for in 2-15-3502;

(b) department of fish, wildlife, and parks, the fish, wildlife, and parks commission as provided for in 2-15-3402;

(c) department of transportation, the transportation commission as provided for in 2-15-2502;

(d) department of natural resources and conservation for state trust land issues, the board of land commissioners as provided for in Article X, section 4, of the Montana Constitution;

(e) department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation as provided for in 2-15-3303; and

(f) department of livestock, the board of livestock as provided for in 2-15-3102.

(2) "Complete application" means an application for a permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures required to be included with the application by the applicable statutes and rules.

(3) "Cumulative impacts" means the collective impacts on the human environment of the proposed action when considered in conjunction with other past and present actions related to the proposed action by location or generic type.

(4) "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis required under this part by an agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment.

(5) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an action that requires an environmental review. If the action involves state trust lands, the term also includes each beneficiary of any trust.

(6) "Public scoping process" means any process to determine the scope of an environmental review or otherwise solicit public comments relating to an environmental review.

Section 3. Section 75-1-201, MCA, is amended to read:

"**75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except the legislature and except as provided in subsection (2), shall:

(i) use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment;

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action;

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity; and

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(v) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(vi) recognize the national and long-range character of environmental problems and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved. The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof

is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law.

(b) When new, material, and significant evidence is presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court considers the evidence within the administrative record under review. Immaterial or insignificant evidence may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

(4) (a) Any action or proceeding challenging an agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 30 days of the action that is the subject of the challenge.

(b) Any action or proceeding under subsection (4)(a) that is brought before an administrative board or hearings examiner must take precedence over other cases or matters before the board or hearings examiner.

(c) Any action or proceeding under subsection (4)(a) that is brought before a district court must take precedence over other cases or matters in the district court unless otherwise provided by law."

NEW SECTION. **Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 75, chapter 1, part 2, and the provisions of Title 75, chapter 1, part 2, apply to [sections 1 and 2].

- END -

FISCAL NOTE

Bill #: SB0377 **Title:** Revise MEPA

Primary Sponsor: Duane Grimes **Status:** As Introduced

Sponsor signature Date

Chuck Swysgood, Budget Director 2/8/01
Date

Fiscal Summary

	FY 2002 Difference	FY 2003 Difference
Expenditures:		
State Special Revenue	65,000	65,000
Federal Special Revenue	435,000	435,000
Revenue:	**0**	**0**
Net Impact on General Fund Balance:	**$0**	**$0**

Yes	No		Yes	No	
	X	Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

Montana Department of Transportation

1. The bill will require MDT to do a separate MEPA document as well as a NEPA on all actions. This means two separate documents for each project other than Categorical Exclusions. MDT does approximately one EIS per year and three to five EAs per year. The cost of an EIS is $500,000 to $1,000,000 and the cost of an EA is $50,000 to $100,000 with an average of $750,000 for an EIS and $75,000 for an EA. Even though two documents are required, there will be similarity and this will reduce the cost of the second document.

SB 377

2. The timeframes for MEPA will be 12 to 18 months, and the timeframe for NEPA will be as presently written in Federal law, which has no time limit. The differences in timeframes between the two processes will result in delivery of analysis at different times. This means that public meetings, drafts, permits, regulatory agency coordination may or may not coincide for the two documents. Depending on the issues, this could cause a 25% to a 50% increase in cost, and the increase could be 100% plus if a particularly difficult issue is involved, especially together with some of the other changes to MEPA being proposed (HB 459). It is assumed this cost will be 40% of the present cost of doing business with one NEPA/NEPA document.
3. Because of the difference in completion dates between MEPA and NEPA, new information that becomes known between the completion dates will lead to differences such that additional litigation opportunities will happen that will result in major changes to both documents. The cost of this litigation and the necessary changes to the documents to make the corrections that are inevitable could reach the cost of the original document. This later statement is probably true of EAs more than EISs. The level of analysis for an EA is less. When a challenge is made to an EA, usually it is because something has been left out that is very important. Because the initial cost is low, it does not take much of an issue to double the original estimate. On average this is assumed to be a 10% increase over the cost of doing one MEPA/NEPA document.
4. Additional costs will be covered by federal aid (87%) and state match (13%). The increased cost shown will represent the cost of additional work by consultants. MDT normally hires consultants to do EAs and EISs. Because of the significant amount of time required to be successful, the necessary FTEs do not exist at MDT. The work required of the consultants will be to produce two defensible documents that will almost certainly conflict with each other if this bill moves forward as presently written.
5. Assuming the above, the annual cost of new EISs and EAs is approximately$1,050,000 ($750,000 + $300,000). Approximately 50% of that figure is a $500,000 per year impact to MDT. This is extremely difficult to quantify because there are many unknowns about the way this bill and others regarding MEPA will be applied. The important message in this fiscal note is there will be impacts to the MDT programs, these impacts will result from a conflict between MEPA and NEPA, the conflicts will be centered on the different requirements of the two laws, and the courts will over time determine the exact extent of the impacts.

Department of Environmental Quality

6. The definition of "environmental review" includes environmental assessments, environmental impact statements (EIS), and checklist environmental assessments that the agency currently does when reviewing, assessing and approving a permit application.
7. All complete applications received will meet the definition of completeness as contained in this bill.
8. Once a complete application is received, all timeline provisions proposed in the bill are immediately triggered.
9. The project sponsor will also provide adequate information at the time the application is deemed complete according to the definition section of this bill. If the project sponsor fails to provide adequate information at the time of submission of the complete application, or if additional information is identified in the course of conducting the assessments in order to adequately evaluate impacts and mitigation of the project, the department will request such information. If the project sponsor cannot respond within reasonable time frames to allow the agency to meet the statutory timeframes in this bill, the department will have to resort to engaging outside consultants to acquire this information and pass this cost on to the project sponsor.
10. Given the experience with completing an EIS on complex and controversial projects, the costs of contracted services to hire multiple contractors to complete the project analysis in the proposed time

frames could increase. The project sponsor will reimburse the agency for any additional contracted services that are necessary to complete the EIS within the time frames.

11. A project sponsor or applicant will pay the entire cost to complete an EIS within the proposed time frames, including costs above the fee limits set by MEPA because the department has historically signed a written fee agreement with project sponsors that allowed fees above the MEPA fee schedule limits.
12. Section 1(4) identifies time frames for completing environmental review documents and Section 1(5) authorizes the agency to extend the time limits by notifying the project sponsor on a one-time basis.
13. A project sponsor will request a meeting with the director on one EIS per year.
14. A project sponsor will submit a written request to appear before the Board of Environmental Review (BER) and appear before the BER only once per year.
15. The appearance mentioned in assumption #14 will occur during a regularly scheduled BER meeting.
16. Based upon historical experience with large complex EIS engagements, the DEQ assumes that with some of these projects, the department will lack adequate information to complete the EIS within the timeframes, even though it is projected in assumption #9 that the project sponsor will provide adequate information at the time the application is deemed complete. The number and costs of environmental reviews that are not completed within the mandated timelines are not quantifiable at this time.

FISCAL IMPACT:

Montana Department of Transportation

	FY 2002 Difference	FY 2003 Difference
Expenditures:		
Operating Expenses	$500,000	$500,000
Funding:		
State Special Revenue (02)	65,000	65,000
Federal Special Revenue (03)	435,000	435,000
TOTAL	$500,000	$500,000
Revenues:		
Federal Special Revenue (03)	$435,000	$435,000
Net Impact to Fund Balance (Revenue minus Expenditure):		
State Special Revenue (02)	($65,000)	($65,000)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

No significant impacts. There might be project delays over and above normal experienced delays.

LONG-RANGE IMPACTS:

There is no long-range impact other than the obvious confusion over doing two environmental analysis documents for the same project separated by twelve or more months.

TECHNICAL NOTES:

Montana Department of Transportation

1. This legislation as written will cause impacts to MDT programs resulting from a conflict between MEPA and NEPA. The conflicts will be centered on the different requirements of the two laws, and the courts will over time determine the exact extent of the impacts.

Department of Environmental Quality

2. Section 1(7) indicates that an agency may not assess fees for a review that exceeds the original time period, whether or not the time period was extended. It is unclear whether the intent is to prohibit the agency from assessing all fees or just the fees attributable to work performed during the extension.
3. Section 1(8) requires that an agency make a "clear showing" to the appropriate board before it may withhold a permit. It does not say whether the appropriate board must have determined that the agency did in fact make the clear showing.
4. SB 377 does not contain a savings clause. It is unclear whether it must be applied to environmental reviews in preparation on the effective date of the bill.
5. Certain permitting statutes administered by the DEQ provide more time to review a complete application than is provided by section 1(4) of SB 377 for preparation of the environmental review document.
6. The Surface Mining Control and Reclamation Act, a federal law, provides that a state may regulate coal mining only if its regulatory program is consistent with and as stringent as that act. Thirty U.S.C. 1260 provides that, under a state regulatory program, the burden must be on an applicant to establish that the application is in compliance with the state regulatory program. Section 1(8) of SB 377 places the burden on the agency to show the application is not in compliance with regulatory requirements. Application of this provision to the DEQ Coal Mine Regulatory Program could jeopardize Montana's authority to regulate coal mining.

   Similarly, the U.S. Environmental Protection Agency delegates to state and local governments authority to administer particular provisions of the federal Clean Air Act when the state or local program is consistent with and as stringent as the Clean Air Act. 42 U.S.C. 7475(a)(3) provides that a major emitting facility may not be constructed in an area designated as attainment with federal ambient air quality standards unless the owner or operator of the facility demonstrates that emissions from construction or operation will not cause or contribute to certain specified levels of air pollution. 42 U.S.C. 7503(a)(3) provides that, in a non-attainment area, a major stationary source may not be constructed unless the owner or operator of the proposed source demonstrates that all major sources owned or operated by the owner or operator in that state are subject to emission limits and are in compliance, or on a schedule of compliance, with all applicable emissions limits and standards under the Clean Air Act. Section 1(8) of SB 377 places the burden on the agency to show the application is not in compliance with regulatory requirements. Application of this provision to the DEQ Air Quality Regulatory Program could jeopardize Montana's authority to regulate air quality.

Department of Natural Resources and Conservation

7. Section 1(4) sets up time limitations for an agency to produce environmental review documents. As interpreted by the courts, MEPA currently requires environmental reviews that may legitimately take more than 90 days, and detailed statements that may legitimately take more than 365 days, to properly complete. The result may be documents prepared more quickly, but that are less capable of sustaining a legal challenge to their adequacy. In addition, the time limitations established by this bill may prohibit state agencies from participating in joint environmental reviews with federal agencies, because state agencies would not be able to mesh time frames for a joint review. Joint reviews can provide state agencies with access to a comprehensive review at less cost than if prepared separately. It cannot be presumed that only the data collected by the proponent is all that will be required for the environmental analysis and if other data is necessary, there will be instances where that data needs to be collected over a full spectrum of seasons (e.g.

spawning habitat by species by season, summer/winter wildlife distribution differences, frequency of inversions with seasons for air quality, etc.) Scoping may bring up issues requiring additional data and studies neither the state nor the proponent thought of, resulting in the need for more time to complete the analysis. The hard and fast time frames put the state (and ultimately the proponent) in the position of choosing between a legal deadline and a legally defensible environmental review.

8. The Trust Land Management Division (TLMD) prepares, on average, 300 MEPA reviews each year. The overwhelming majority are prepared in-house. Most reviews are prepared within the timeframes contemplated by SB377. Those reviews that are not generally prepared in-house present issues or concerns that require additional time or resources to adequately review. TLMD staff incorporate preparation of MEPA documents into their other land management responsibilities. TLMD may need to require some applicants to pay for third-party preparation of environmental reviews to ensure all reviews are completed within the time limitations of this bill. In addition, many activities are proposed by TLMD, as the land manager, and put out for competitive bid. In these cases, there is no "applicant" to charge costs for environmental reviews.
9. Section 1(7) prevents the agency from charging the project sponsor if the review exceeds the original time period, even it the sponsor agrees that an extension is reasonable. If the agency does not have the budgetary capability to fund and continue the review, an adequate and legally defensible review document will not be produced. If the agency has budgetary capability it may continue with the review, but these costs will now be borne by the State of Montana, rather than the project sponsor.
10. Section 1(8) prevents the agency from withholding a permit or other authorization if it has not completed its environmental review within the prescribed time frames, unless the agency can make a clear showing that the approval would violate an applicable statutory or regulatory requirement. The agency may not be able to prove substantial likelihood of a violation if the environmental review is not yet complete. This standard may also conflict with current case law.
11. Section 1(4)(a) limits public scoping to 30 days. Detailed statements often require scoping meetings to be scheduled at multiple locations across the state. It may legitimately require more than 30 days to schedule and conduct hearings and allow reasonable time for the public to review and comment following the hearings.

    In addition, Section 2(6) defines public scoping to also include any solicitation of public comments relating to an environmental review, which may be interpreted to include the time period required for comment on the draft environmental review. A 30-day cumulative time limitation for scoping and draft comments is insufficient.
12. Section 2(2) defines a complete application, but does not define who will make the determination that all required data has been received. It is recommended that the agency be responsible for review and determination of completeness of the application.
13. Section 2(5) defines project sponsor to include state school trust beneficiaries. This may conflict with Article X, Section 4 of the Montana Constitution, which grants the Board of Land Commissioners the authority to manage school trust lands.

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on February 12, 2001 at 3:10 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:
Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Bill Tash (R)
Sen. Ken Toole (D)

Members Excused: Sen. Mike Taylor (R)

Members Absent: None.

Staff Present: Melissa Rasmussen, Committee Secretary
Mary Vandenbosch, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 408, 2/9/01
SB 377, 2/5/01
Executive Action: None

Sponsor: **SENATOR BEA MCCARTHY, SD 29, Anaconda**

Proponents: **Anne Hedges, Montana Environmental Information Center (MEIC)**
Cary Hegreberg, MT Wood Products Association
Gail Abercrombie, MT Petroleum Association
Patrick Heffernan, MT Logging Association (MLA)

it was necessary. **SEN. TOOLE** asked what kinds of things she wanted to accomplish with the new language. She answered that she hoped it would develop guidelines for the process.

Closing by Sponsor:

SEN. MCCARTHY thanked the committee for a good hearing.

HEARING ON SB 377

Sponsor: **SENATOR DUANE GRIMES, SD 20, Clancy**

Proponents:
Michael Kakuk, MT Contractors Association
Henry Fossnock, H & F Logging Inc.
Ed Regan, RY Timber Corporation
Don Serba, Pulp Paper Workers Resource Council
Tim Ryan, Larex Inc.
Ed Eggleston, Self
Rudy Ketchum, Self
Paul Buckly, Self
Marty Johnson, Self
Tom Monforton, Self
Julie Martin, Self
Joe Keller, Self
Kim Lyles, Self
Gary Marks, Self
Rita Windom, MT Chambers
Sheila Keller, Self
John Youngberg, MT Farm Bureau
Carl Schweitzer, Bozeman & Kalispell Chambers of Commerce
David Server, PACE International
Frank Crowley, ASARCO
Steve Pilcher, MT Stockgrowers
Steven Schwab, Self
Scott Medenhall, Self
Ellen Engstedt, MT Wood Products Association
Peggy Trenk, MT Relators Association
Margaret Morgan, MT Petroleum Association
Aiden Myhre, MT Chamber
Don Allen, WETA

Opponents:
Howard Strouse, Audubon
Jeff Barber, MT Wildlife Federation, MT Chapter

American Fisheries Sociey
Jack Terskie, Self
Steve Thompson, MT Conservation Voters
Anne Hedges, MEIC
Matt Clifford, Clark Fork Coalition
Beth Kaeding, Self
Richard Parks, Northern Plaines Resource Council
Hope Stevens, Self
Matthew Leow, MT Research Group
James Sweaney, Self
Steve Kelly, Friends of the Wild Swan

Informational: **Jim Currie, MT Department of Transportation (MDT)**

Opening Statement by Sponsor:

SENATOR DUANE GRIMES, SD 20, Clancy, opened the hearing on SB 377 by reminding the committee of a previous bill brought before the 56th legislature. He pointed out that the reason for the bill's failure were a few technical errors. The new bill addresses many of the concerns brought up by the committee at that hearing. He informed the committee that Greenpeace is promoting a concept called "the precautionary principle". This is an international principle that they are starting to apply. The principle states that when someone proposes a project, they must prove beyond a shadow of a doubt that it will never cause any change in human health or the environment. Even the most minuscule changes are unacceptable. This is an unreasonable principle to live by. However, Montana is effectively applying the use of this principle through MEPA. MEPA has put a stop to numerous projects. MEPA was not designed to be an obstruction, but a review. This bill makes necessary changes and creates needed sideboards. SB 377 creates reasonable time lines in which to conduct a review. By implementing these time lines the environmental review process will be accelerated. After the complete application is received, an agency has 60 days to conduct a public scoping process, 90 days to complete an environmental review and 365 days to complete a detailed environmental statement. Under this bill, if the permitting agencies are overdue with completing the work, the project sponsor does not have to continue funding their additional work. Also, the permit agency can still get a permit extension if they provide a reasonable explanation. If the permitting agency has reason to believe that the project would not meet Montana's strong environmental laws, they can reject the permit. This allows the agency to bring finality to the MEPA process. A sideboard created in the bill provides that if anyone is going to

challenge the permit they must do so within 30 days. **SEN. GRIMES** drew the committee's attention to the definition of "cumulative impacts". There are a few amendments **EXHIBIT(nas35a01)**,that will be proposed to change the definition. Currently, agency rules require the consideration of cumulative impact. The bill would change it to "may". Legislation correctly defines those issues as past or present projects related to the proposed action. This directs the project to be scientific and legitimate rather than opening up every application to hypothetical speculation. If a permit is denied, they would have to start the application process all over again. The amendments address what happens if there is a conflict between MEPA and NEPA. The problem would be solved by defaulting to NEPA. **SEN. GRIMES** concluded his remarks by declaring that this bill has been mis-characterized. The bill would take down the signs that hang on Montana's borders that say we are closed to business. It replaces them with signs that say if you're willing to work with our strong environmental laws, Montana will work with you.

Proponents' Testimony:

Michael Kakuk, MT Contractors Association, expressed his support for the bill.

Henry Fossnock, H & F Logging Inc., informed the committee that he supported SB 377 because of issues he has dealt with first hand with operations being shut down because of MEPA. One example he gave was the Plum Creek Timber Operation in the Swan state forest. Once he got started, a judge ruled that the operation had to stop. The company lost two weeks of work and numerous logs could not be salvaged. He professed that he does not want the environment harmed, but the law needs to be made clear so a decision can be made to move on or abandon a project.

Ed Regan, RY Timber Corporation, spoke in favor of SB 377 and submitted written testimony **EXHIBIT(nas35a02)**.

Don Serba, Pulp Paper Workers Resource Council, exclaimed that MEPA has become a playground for environmental lawyers. Making changes to MEPA does not mean degradation to the environment.

Tim Ryan, Larex Inc., notified the committee that members from his company had recently met with Governor Martz to discuss economic development. He would like to bring a new plant to the state of Montana. However, there has been some difficulty in understanding the obstacles that face them due to MEPA. The time line issue is crucial in planning this new site. SB 377 gives

firm time lines to the process and would let the company know exactly what they need to do to apply.

{Tape : 2; Side : A}

Ed Eggleston, Self, told the committee how he has watched projects die in Lincoln County because of environmental laws. SB 377 could solve problems of unemployment. There are communities that are dying because of lack of jobs. He pleaded with the committee to help the citizens of these counties by passing this legislation.

Rudy Ketchum, Self, spoke in favor of SB 377 and submitted written testimony **EXHIBIT(nas35a03)**.

Paul Buckley, Self, stated how the current environmental laws imposed on industry have more to do with legal interpretation of laws and statutes than actual environmental impacts. He went on to point out how much money the Golden Sunlight Mine has put into the economy of Montana over the years. He concluded by stating that the economy of Montana is falling down and that the legislature needs to do what they can to help rebuild it.

Marty Johnson, Self, spoke in favor of SB 377 and submitted written testimony **EXHIBIT(nas35a04)**.

Tom Monforton, Self, spoke in favor of SB 377 and submitted written testimony **EXHIBIT(nas35a05)**.

Julie Martin, Self, told the committee about her family logging business. She would like that tradition to carry on in her family and feels the best way to do that is by passing SB 377.

Joe Keller, Self, contended that state sales are suffering and the legislature needs to do something to help the economy.

Kim Lyles, Self, reiterated to the committee that Montana's children are leaving for better economic conditions. He stated that the state of Montana needs to be more business friendly.

Gary Marks, Self, addressed the issue of closing businesses. He pleaded with the committee to help the natural resource business.

Rita Windom, Lincoln County Commissioners, stated that her community is living in a state of poverty. Due to the low economic conditions there, has been an increase in social

problems such as domestic abuse. She commented how sad it is that kids are growing up and leaving her community.

Sheila Keller, Self, told the committee that she has seen Libby change in the last ten years. American Timber has closed and the increase of unemployment has lead to the detrition of the family in her area.

John Youngberg, MT Farm Bureau, pointed out to the committee that times have changed and our laws need to change with them.

Carl Schweitzer, Bozeman and Kalispell Chambers of Commerce, charged that clear environmental guidelines need to be established so that a business could determine if they would like to come to Montana.

David Server, PACE International, stated that he believed that this bill would streamline putting in power plants that would provide an affordable supply of electricity. He concluded that this bill is a good first step in making Montana competitive once again.

Frank Crowley, ASARCO, spoke in favor of SB 377 and submitted written testimony on behalf of **Douglas Parker, ASARCO, EXHIBIT(nas35a06).**

{Tape : 2; Side : B}

Steve Pilcher, MT Stockgrowers, argued that good policy requires good decisions. SB 377 creates achievable deadlines for agencies that will hold applicants responsible for their actions.

Steven Schwab, Self, told the committee that he is an environmentalist who also believes in industry. He gave some examples of things that he has done to protect the environment. When he was growing up, industry was painted as an evil, but he says that is not true. He has worked for the Golden Sunshine Mine for eighteen years and he can testify first hand that there is no underlying agenda to harm the environment. The mine has a mandate to operate in a safe and environmentally sound manner.

Scott Medenhall, Self, stated that his business works towards economic development. His business alone accounts for 1/6 of the county's tax base. Two mines in Jefferson county are slated to close within the next two years even though there is enough ore. The MEPA process has effectively closed down these two

businesses. There needs to be an effective process to go through that would generate natural resource based businesses.

Ellen Engstedt, MT Wood Products Association, spoke in favor of the bill and submitted written testimony **EXHIBIT(nas35a07).**

Peggy Trenk, MT Relators Association, spoke in favor of SB 377. She also spoke on behalf of **Charles Brooks, Billings Chamber of Commerce.**

Margaret Morgan, MT Petroleum Marketers, stated that her association lends their support for this legislation and urged a do pass.

Aiden Myhre, MT Chambers of Commerce, expressed her support on behalf of the businesses that employ Montana's citizens.

Don Allen, WETA, expressed his support for SB 377.

Opponents' Testimony:

Howard Strouse, Audubon, informed the committee that change does not necessarily mean modernizing or streamlining. The passage of this bill would severely weaken MEPA. Over the years there have been 51 bills introduced to change MEPA, only 24 of those bills have passed. The EQC has recognized that there are four major goals of MEPA: it should help make informed state decisions, be accountable in open state decisions, balance state government decisions and ultimately make better state decisions. Any proposed amendments should be measured against those four purposes. The interim subcommittee made recommendations to change MEPA. Sideboards for "cumulative impacts" already exist. He stated that adoption of the proposed amendments would not only increase the time of appeals and getting a project started out, it would also undermine the amendments adopted in 1999. Shortening the time it takes to do an EIS would result in short, sloppy studies. He feared that short studies would cause irreparable harm to the environment and the economy. There must be adequate thoughtful review. He reported as an EQC member he worked to reduce the possibility of lawsuits and delays. This bill will have the opposite effect. It will reduce public input and increase delays and mistakes. The interim committee looked at other state's environmental laws, such as California and Washington and found that both states have good economies. He charged that MEPA is not the cause of Montana's economic trouble.

Jeff Barber, MT Wildlife Federation, MT Chapter American Fisheries Society, exclaimed that out of 17,376 analyses performed by MEPA, only one has been stopped. He asked the committee what was scientific about the time frames created in this bill. The proposed time frames would in fact conflict with the existing time frames. **Mr. Barber** gave the example of a coal study. Usually a coal study takes years; with the proposed thirty days it would be virtually impossible to do a thorough study. He also pointed out that the proposed 30 days for "scoping" is not adequate. With this bill there are no safety valves for project sponsors once the process starts. What happens at the end of this time frame is unclear. The language turns MEPA into a permit. Also, if a review is not finished, how can a good determination be made. Finally, this creates limbo for the agencies. He pointed out to the committee that the phrase "substantial likelihood" is not defined. He concluded his comments by arguing that it is impossible for an EIS to be completed when the laws and standards are always changing. As a result it will increase litigation and delays.

{Tape : 3; Side : A}

Jack Terskie, Self, pronounced that the country has experienced ten years of economic growth with MEPA on the books. He stated that the legislature has been streamlining environmental laws since 1993 and as a result there has not been economic growth. This bill will not change economic growth. He charged that the department of state lands will still get their cut. He said in response to statements made by the opponents that MEPA does not apply to construction of plants on private land. He also claimed that MEPA does not stop projects from going forward. The passage of this bill will create more litigation and increase the contentiousness of environmental laws because of the vague language. People will begin suing under the Montana Constitution instead of under MEPA. He stated that by making cumulative impacts optional, as opposed to mandatory, lawsuits would increase.

Steve Thompson, MT Conservation Voters, challenged that the hearing has held numerous misconceptions. He stated that he has respect for mill closures and lack of jobs, but MEPA has nothing to do with that. MEPA does not deal with logging. The timber industry sells the maximum cut every year. Last year the timber industry sold more than their maximum board feet. Essentially, the provision of cumulative impacts would overturn portions of the 1996 State Forest Management Act and raise constitutional issues. The impact on water sheds would be detrimental. Logging

has a large impact on water sheds and not conducting the proper studies would harm those areas. He gave the example of the proposed Plum Creek road construction. He concluded his comments by denouncing a comment made by **REP. DOUG MOOD**, that claimed there have been no timber sales in the Swan River State Forests for the past ten years.

Anne Hedges, MEIC, argued that SB 377 is riddled with problems. She gave her sympathy for the proponents of the bill but claimed that this bill does not change many economic factors. She raised a few questions to the committee, such as. When does the agency get a complete application; who decides when the application is complete; what qualifies as a complete application; when does the clock start ticking for the application process. She stated that the average review time for an EIS is 21 months. The review times do not fit in with the bill. She asked wether the DNRC is going to have to make speeder decisions. The bill will increase the time the agencies and the EQC have to spend in review processes. She also pointed out that the time frame the people have to go to the EQC and the role of the board and agencies is unclear. She charged that the bill raises numerous constitutional questions. In the end the tax payers will have to pick up the tab for studies that cannot get done under these proposed time frames. She concluded her testimony by giving examples of projects that did not conduct adequate EIS's. She stated that studies cannot be hastily done because all information needs to be considered.

Matt Clifford, Clark Fork Coalition, declared that these assertions are based mainly on emotion and not fact. Due to the contentiousness of this bill decisions need to be based on fact. He charged that the reasons for the delay in the Rock Creek Mine are federal not state.

Beth Keading, Self, told the committee that she has been a NEPA consultant for ten years. She stated that in her experience setting arbitrary time limits only leads to problems. Unexpected things come up when preparing an EA or EIS and if you have to make a decision without having all of the data you will not make good decisions based on environmental consequences. If the state is allowed to proceed under the current MEPA laws, it will be in a better position legally.

Richard Parks, Northern Plaines Resource Council, spoke in opposition of SB 377 and submitted written testimony **EXHIBIT(nas35a08)**.

Hope Stevens, Self, spoke in opposition of SB 377 and submitted written testimony **EXHIBIT(nas35a09)**.

{Tape : 3; Side : B}

Harold Young, Flathead Resource Council, spoke in opposition of SB 377 and submitted written testimony on behalf of **Thompson Smith, Flathead Resource Council EXHIBIT(nas35a10)**.

Matthew Leow, MT Public Interest Group, concurred with what the previous speakers have said.

Jim Sweaney, Self, stated his opposition for SB 377. He stated that Montana did not pass MEPA because it was anti-industry but because industry proved to be anti-Montana.

Steve Kelly, Friends of the Wild Swan, expressed his opposition for the bill. He also added that he did not see how the passage of this bill would lead to economic development and a better quality of life.

Informational Testimony:

Jim Currie, MT Department of Transportation, told the committee that the department was concerned with the conflict between NEPA and MEPA, but those concerns have been addressed by the amendments.

Questions from Committee Members and Responses:

SEN. BILL TASH asked **Mr. Strouse** if he could comment further on California's environmental laws as compared to Montana's. **Mr. Strouse** said the information he had was sketchy, but he could tell the committee that a California EIS was required to list significant impacts.

SEN. MCCARTHY asked **Mr. Barber** if taking years to complete a study was a good thing. He responded by informing the committee that the MEPA process and permitting process run parallel. They naturally take years. **SEN. MCCARTHY** inquired about how many years would be reasonable to stall or roadblock a study. **Mr. Barber** apprized that it's not reasonable to stall because of the MEPA process. **SEN. MCCARTHY** asked for a beginning to end reasonable time line. He replied that it depends on the project.

SEN. VICKI COCCHARELLA asked **SEN. GRIMES** what the purpose of section 2 was. He replied that it was a communication mechanism.

It puts into statute that if there is a problem agencies can go somewhere to air their grievances. She asked if the point was being able to go before the board. **SEN. GRIMES** replied yes.

SEN. COCCHIARELLA asked **Todd Everts, EQC,** if the review boards had extra time. He told the committee that the board usually has a full agenda, but they reserve some time for these types of circumstances. She asked if the board had to drop items due to lack of time. He said yes.

SEN. TOOLE asked **Mr. Hegreberg** if logging sales that go through MEPA review are exclusively state lands. **Mr. Hegreberg** told the committee that NEPA governs state lands. He added that private and tribal lands are not subject to the MEPA review. Trust lands are the only category of lands that go through the MEPA process. **SEN. TOOLE** inquired if the target of 42 million board feet of harvested timber had been met. **Mr. Hegreberg** explained that it had been met to the detriment of other parts of the state. He told the committee that the state is borrowing against the future of other programs. **SEN. TOOLE** wanted to know if **Mr. Hegreberg** disagreed with the target rate. **Mr. Hegreberg** admitted he has had some issues with the target rate. **SEN. TOOLE** concluded his questions by asking what the percentage of available timber of state trust lands is. **Mr. Hegreberg** stated that he was not qualified to answer that question.

CHAIRMAN CRISMORE asked **Mr. Hegreberg** if he had a figure as to how much of the 42 million board feet of timber was grown on state trust lands. **Mr. Hegreberg** informed the committee that the state trust lands are producing over 120 million board feet annually. However, 25-30 million board feet is dying annually. **CHAIRMAN CRISMORE** inquired about the true definition of sustainable cut. **Mr. Hegreberg** told the committee that the legislation passed in 1995 stated that they had to comply with state and federal environmental laws. Those factors are built into the definition of sustained yield. The board of commissioners defined it further by passing the State Forest Management Plan. **SEN. CRISMORE** stated that if we grow 120 million board feet then we have not cut as much as we could have on our state trust lands. **Mr. Hegreberg** said that was correct.

SEN. LORENTS GROSFIELD asked **Mr. Kakuk** for clarification on amendments to page two line fifteen. **Mr. Kakuk** said it was meant to make the process faster. **SEN. GROSFIELD** wanted to know about cumulative impacts, why did they say "may" instead of "shall" and who decides when it is appropriate. **Mr. Kakuk** stated that the section did not currently change what is happening now. It

states that if its appropriate they may list cumulative impacts. MEPA requires an agency to list cumulative impacts, but state law does not. **SEN. GROSFIELD** asked if the proposed amendment would take care of the need to go to each beneficiary. **Mr. Kakuk** clarified that the amendment would take care of any person coming in and saying they are a beneficiary. It is meant to specifically identify the school districts.

SEN. COCCHIARELLA asked **SEN. GRIMES** if the bill would stop feeding money out of state to companies or individuals hired to work on these studies if they are not done in a timely manner, and wondered about increased cost. **SEN. GRIMES** stated that the ASARCo letter answers many of **SEN. COCCHIARELLA'S** concerns. He added that time lines are not set until the application is completed. He deferred to **Mr. Kakuk** who stated that they will have to get the same information in a shorter time frame. **SEN. COCCHIARELLA** stated that consequently in order to meet the time frame the agency may have to hire more people. **Mr. Kakuk** pointed out that it may be better to have five people get done in a week what one person can do in a month.

{Tape : 4; Side : A}

SEN. TOOLE asked **Mr. Terskie** if he had handled many MEPA cases. **Mr. Terskie** informed the committee that he has handled many MEPA cases including two in the supreme court. **SEN. TOOLE** asked him to address wether or not there is a requirement to do cumulative impacts. **Mr. Terskie** said that under the current language of the statute they must be addressed. The bill makes it so that they no longer have to. He added that that would open the door to more litigation.

Closing by Sponsor:

SEN. GRIMES closed by addressing some of the issues brought up by the opponents. He stated that agency initiated projects are not included in the bill. This bill deals with sponsor initiated projects. He pointed out that under the time frames the sponsor is under the same pressures once the application has been completed. He argued that the constitutional issues had been taken care of under the amendments. **SEN. GRIMES** stated that cumulative impacts need to be secured in statute. He hoped that the committee was not being threatened by talk of additional litigation. Right now the state is mired in litigation and delayed projects. He told the committee that they need to keep in mind that the application will be complete. The clock will not start until the application is complete. He charged that

right now it is not scientific to have unlimited time frames. There needs to be something established. The bill brings the process out into the open. The bill helps people to get moving. The intent of the bill is not to put pressure on the agencies. The bill is intended to create clear guidelines. He told the committee that at the end of the bill, if they wanted to put the word "final" in that was okay. The bill creates an open, honest, straight up and truthful process. **SEN. GRIMES** commented that he had seen some buttons around that say "don't mess with MEPA," and he understands the people's desire for a clean and healthy environment. However, he would submit to the committee that the subtitle on those buttons should be, "because with MEPA we get to mess around". He pleaded with the committee to stop the downward spiral of Montana. He pointed out that each year people come and testify for bills, but you don't see them year after year because they have stopped showing up. They stop showing up because their industries are dried up. People do not want to do business in Montana. The absence of those people should show the committee that something is amiss. He concluded his remarks by quoting former **SEN. MURPHY** who stated that he would never have voted for MEPA if he would have understood how it would have been applied by the courts down the road.

The following testimonies were handed in at the end of the meeting:
Dr. Starshine, MWA, handed in written testimony in opposition of SB 377 **EXHIBIT(nas35a11).**

Nancy Owens, Self, handed in written testimony in opposition of SB 377 **EXHIBIT(nas35a12).**

Mark Fix, Self, handed in written testimony in opposition of SB 377 **EXHIBIT(nas35a13).**

League of Rural Voters, handed in a petition in support of SB 377 **EXHIBIT(nas35a14).**

A Guide to the Montana Environmental Policy Act
EXHIBIT(nas35a15).

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 2/12/01
BILL NO. SB 377

LEGAL MEMO

TO: DON ALLEN, WETA
FROM: MICHAEL S. KAKUK, ATTORNEY
RE: AMENDMENTS TO SB 377
DATE: FEBRUARY 12, 2001

PURPOSE AND DISCLAIMER

You have asked me to prepare a brief summary of amendments and a response to the Fiscal Note on SB 377. The summary is provided below.

Please keep in mind that this memo is based on the bill as introduced and reflects my understanding of the "intent" of the bill. The need for additional amendments may become evident during public testimony.

PROPOSED CONCEPTUAL AMENDMENTS:

1. Page 1, line 27: Strike "shorter".
2. Page 1, line 29: Strike "30; insert "60"
3. Page 2, line 11: Following "any" insert "portion of a"
4. Page 2, line 15: Strike "clear showing to the appropriate board, if any"; insert "written finding"
5. Page 2, line 16: Strike "If" through the rest of the sentence on line 19.
6. Page 2, line 20: Following "sponsor" insert "under the provisions of this part"
7. Page 3, line 18: Following "means" insert ", unless otherwise provided by law,"
8. Page 3, line 22: Strike "and"; following "present" insert " , and future"
9. Page 3, line 30: Following "each" insert "institutional"; following "trust" insert "as described in the enabling act of 18__, section 10 and 11"
10. Page 4, line 2: Strike "or" through the rest of the sentence.
11. Page 4, line 6: Following "possible" insert "under the provisions of this part"
12. Page 6, line 13: Following "(a)" insert "A challenge to an agency action under this part may only be brought against a final agency action." Renumber subsequent subsections.
13. Page 6, line 13: Following "challenging" strike "an", insert "a final"
14. Concept Only: Remove NEPA/MEPA conflict. Exact language and location still under review.
15. Concept Only: Remove "burden shifting" conflict with the federal Clean Air Act and coal Statutes. Exact language and location still under review.
16. Concept Only: Toll time limits for the following administrative reviews. Exact language and location still under review.
17. Concept Only: Clarify that SB 377 will only affect those environmental reviews that are begun after its effective date.

    - Significance Determination (SB 408)
    - Alternatives Analysis (HB 459)
    - Design Detail (SB 377)

RESPONSE TO FISCAL NOTE

Assumptions:

1 through 6. No separate NEPA document will be required. See amendment 14.

Technical Notes:

1. No separate NEPA document will be required. See amendment 14.
2. The language has been clarified. See amendment 3.
3. The language has been clarified. See amendment 4.
4. The language has been clarified. See amendment 17.
5. The language has been clarified. See amendment 1.
6. The language has been clarified. See amendment 15.
7. See the response to the "argument against" regarding defensible MEPA documents on page 2.
8. No additional comment required.
9. No additional comment required.
10. No additional comment required.
11. The language has been clarified. See amendment 10.
12. See the response to the "argument against" regarding completeness determinations on page 7.
13. We see no conflict. The Land Board's duties regarding school trust management are not being affected through SB 377.

SB-377
EXHIBIT NO. 2
DATE 2/12/01

R•Y TIMBER, INC.

Corporate & Sales Office:
N. End of Maple Street • P.O. Box 220 • Townsend, MT 59644 • Phone (406) 266-3425 • Fax (406) 266-3427
Manufacturing Site:
5284 Hwy. 89 South • P.O.Box 990 • Livingston, MT 59047 • Phone (406) 222-3360 • Fax (406) 222-8748

MEPA TESTIMONY
2/12/01

Good afternoon. My name is Ed Regan; I'm representing RY Timber Corporation, which is headquartered in Townsend Montana. We operate a sawmill in Livingston and one in Townsend. RY Timber creates about 400 jobs in our sawmills and logging operations throughout the state.

I would like to inform the committee about an experience RY faced in 1999 on the West Middle Fork/Blacktail Timber Sale when a group of activists decided to litigate this sale under the MEPA statute. The timber sale is located on state lands administered by the DNRC in Dillon Montana. Timber harvesting included the removal of 5mmbf using helicopters. The sportsmen's group petitioned the court to stop the timber harvest because they alleged that DNRC should have prepared a supplement to the FEIS that reflected minor changes between that document and the actual fieldwork. **Higher than anticipated timber volume (i.e. prescription remained the same-same leave trees-no environmental differences from FEIS), failure to consider whether a previous logging unit contained old growth timber and disagreement over the department's use of telemetry data proving elk winter range would not be harmed**

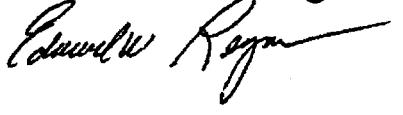
constituted their reasons for the lawsuit. In its final order the court ruled in favor of the Department on all counts except one small procedural issue. **(Why the Green classification was used exclusively when Remington's classification is found in SLFMP and he thought should have been considered / DNRC considered Remington only for guidance)** In fact the judge prefaced his ruling on that count by saying "he was not surprised an astute lawyer going through all of the documents was able to find an error".

Our company purchased and posted a bond for the Blacktail sale in August of 1998. We planned to harvest about 70% of the volume during the 1999 logging season. At the time we were awarded the Blacktail Contract our firm also owned and operated a small helicopter logging company that employed about 25 people. This timber sale was an ideal opportunity that would allow us to harvest a large volume of helicopter wood on what we thought would be a profitable logging job. Because of the lawsuit RY lost the 1999-logging season. We had difficulty finding last minute work for the helicopter crew because at that time of the year most logging contracts are already spoken for. Additionally our sawmills had to find replacement volume in order to keep running through the coming winter and spring breakup. Most of this replacement volume came from jobs that had to be logged during the winter months at higher production cost. Another hidden expense to RY was the off loading, storage, and reloading of road construction materials destined for the state timber sale. Instead of delivering directly to the job site we had to store these

supplies **(bridge, culverts, planking, fencing material)** in Dillon until the timber sale started up. Within six months after the Blacktail litigation we ended up grounding our helicopter, terminating those employees and shutting down the helicopter company. Unfortunately, short of another lawsuit, there are no provisions in our contract with the State of Montana for reimbursement.

MEPA, which I now refer to as "The Montana Economic Prevention Act", needs to be streamlined and tightened-up. We have to make it harder for eco-activist groups to file lawsuits. In the end, these folks should be held financially accountable for their actions **(Bonds)**. I would bet that most of the other lawsuits involving MEPA also center on process & paperwork mistakes rather than violations of meaningful environmental standards. The law in its current form requires expensive and time-consuming analysis of activities, which don't always cause a significant impact. "Working people of Montana need to rescue our economy from the clutches of the environmental lobby and their army of lawyers that are bought and paid for by the wealthy tax-free foundations." Passage of the MEPA amendments before you today would sure help level the playing field. Thank you for the opportunity to weigh in on this issue.

Edward W. Regan
Resource Manager



Mr. Chairman, Members of the Committee and Senator Grimes, I'm Rudy Ketchum, a computer specialist employed by Golden Sunlight Mine near Whitehall. I appreciate the opportunity to testify today.

I'm very aware of all the things this state has going against it in terms of attracting business.

Our transportation system is lacking.

Air travel is poor and expensive.

Our access to highspeed Internet connections is limited.

We've had a history of having high business taxes

But perhaps most importantly, some groups want Montana to be ashamed of what we are – a natural resource state.

Natural resource jobs pay well and provide a sound base for a diversified economy. In addition, they offer employment to folks like myself who have what are referred to as 'high tech' degrees.

I am someone who straddles the fence of what some call the 'Old Economy' and what has been referred to as the 'New Economy'.

I'm all for high-tech jobs and hope Montana can improve on its 'New Economy' sector. But the fact is, it takes an incredible number of those jobs to equal the wages and benefits paid by someone like Golden Sunlight. It takes substantial plant and equipment to equal a county tax payment of someone like the East Helena smelter. And it takes a business with the need to employ someone like me with a degree in what is considered to be a high tech field.

My third child was recently born. My wife Amy and I want to raise our children here. In order make that happen, I need your help in turning this state's economy and job situation around.

This bill helps. Please support SB 377.

Rudy Ketchum
208 2 East
Whitehall, MT 59759

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 2/12/01
BILL NO. SB 377

Mr. Chairman, Members of the Committee, Senator Grimes, my name is Marty Johnson. I'm an electrician at the Golden Sunlight Mine and I live in Whitehall.

In 1971, when I graduated from high school, good jobs were easy to find. In fact, most of the people I knew had good jobs. Jobs that paid good wages--wages that supported families. In Montana, you could work in the construction field, in mining, in the timber industry, for the railroad or any number of places. In fact, most people I knew in Livingston, where I grew up and lived, bought a house and lived in it all their lives. We had a great school system, beautiful parks, and terrific athletic programs for all ages and lots of opportunities. Life was stable, consistent and good.

Sadly, some of our kids will never know a life like I knew. The base of Montana, farming, ranching, logging, mining are all suffering. They have been under attack for years now and somehow, we've all decided that that is OK. It's not OK.

Opportunity for the working man has continued to slip away year by year as these businesses have been forced to close, curtail operations, move to escape a lousy tax structure or to escape overbearing regulation.

We can all share some blame here but it is time to stop pointing the finger and start doing something about the mess we are in. We are losing our jobs daily, many are working 2 jobs to provide for their families and we are not choosing where we want to live anymore but rather are living where we have to just to put food on the table.

But its not too late. We can change this. You can change this. For 10 years now I have been fighting for the mine I work for, showing up at hearings, reading and commenting on EIS's, pulling money out of my pocket to fight battles in court and I have been up here several time trying to save my way of life.

I've done all of this because I am not ready to give up on the hope I have for my kids. I want them to know the secure, consistent life that I saw all around me when I was just starting out. I want them to choose where they want to live, I want them to have a job that will provide for them and I want them to experience the small town Montana atmosphere that I did.

We need to turn this around for my kids, for your kids and for all our kids. You can start by passing this bill.

Thank you.

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 2/12/01
BILL NO. SB 377

Marty Johnson
P.O. Box 624
Whitehall, MT 59759

Mr. Chairman, Members of the Committee, Senator Grimes, my name is Tom Monforton and I live in Whitehall.

The mine I work at has withstood MEPA lawsuits almost nonstop since being granted an expansion permit in 1992. Fighting the lawsuits has taken a lot of money and a lot of time. Worse yet, the lawsuits are mostly based on the policies and procedures of wading through MEPA, rather than being about meeting environmental standards.

It's that nonstop strangulation of legal actions that scare off investors. Why not just put your money somewhere else?

One of the environmentalists was in the paper talking about this bill and others and said there's no problem with our MEPA and the facility siting laws. "Show me the beef," she said.

That's the problem. There's hardly any beef to show anyone. The word is out. Business people know it's not a smart place to come. Investors are putting their money into states and countries where they don't always have a big fight over every phase of their project.

If MEPA is working so well, can anyone answer this question for me?

Over the past 10 years, how many companies like the one I work for, have located here and employed 100 or more people? 5? 10? 20?

I'd estimate it isn't over 10. And that's only 1000 new jobs over a decade. I'd venture a guess that we have lost that many jobs in the past year and stand to lose hundreds more in the months to come.

How many large projects that pay, say, $1 million in taxes a year have located in Montana in the last 10 years? I'd bet not very many

And they say MEPA's working fine.

I disagree, and I urge you to help Montana by starting to fix it. Please support this bill.

Thank you.

SENATE NATURAL RESOURCES
EXHIBIT NO. 5
DATE 2/12/01
BILL NO. SB 377

Tom Monforton
165 Yellowstone Road
Whitehall, MT 59759

SENATE NATURAL RESOURCES
EXHIBIT NO. 6
DATE 2/12/01
BILL NO. SB 377

ASARCO

February 12, 2001

Senator Crismore and Member of the Senate Natural Resources Committee;

I offer this letter in **support of SB 377** which proposes revision to MEPA.

I have over 20 years experience working with environmental permitting and environmental analysis in Montana. I have been involved with Asarco's attempts to permit the Rock Creek Mine Project (which has been sold to Sterling Mining Company) for over 15 years. I have seen the environmental review process become more complex and significantly more protracted during that time. It has also become a venue for project opponents to delay projects. **Unfortunately, the additional time currently utilized in the permitting process does not appear to result in substantially better decisions on part of Montana's regulatory agencies.**

In considering time limits to the environmental review process, the Committee needs to understand that for complex projects such as a large mine, there are several years of environmental study and permit review **prior to beginning the MEPA process.** The DEQ's finding that a permit application is complete in essence means that the Department has sufficient information to make a permit decision.

Revisions to the MEPA process are essential if Montana wants to attract future interest in developing our mineral resources. Thank you for your consideration of this bill.

Sincerely,

Douglas Parker

Douglas C Parker
ASARCO Incorporated

ASARCO Incorporated, 127 E. Main; #210, Missoula, MT 59802
(406) 728-8510
Fax No: (406) 728-3512

SENATE NATURAL RESOURCES
EXHIBIT NO. 7
DATE 2/12/01
BILL NO. SB 377

SENATE BILL 377

Mr. Chairman and members of the committee: For the record, my name is Ellen Engstedt and I am representing the Montana Wood Products Association. Our membership is strongly in favor of SB 377 and commend Senator Grimes for bringing it forth.

SB 377 provides at least two very crucial components – time limits and definitions. MEPA was not intended to be used as a club to stop development nor was it intended to be an endless process of data gathering and analysis. However, by lacking in specific time limits and definitions, MEPA has become exactly that.

SB 377 outlines specific time limits under which an agency must act to ensure a timely completion of the environmental review process. It does not eliminate that process, but rather, provides that it is not an endless one.

Also, by establishing definitions, SB 377 makes the process more predictable and workable and thus more fair and reasonable to entities that want to invest their resources in Montana. Who among us does not want at least some degree of definition in our lives? Outlining specific definitions takes away some of the subjectivity that has plagued the natural resource based industries in attempting to develop projects. It provides fairness.

SB 377 is a crucial component to the package of MEPA related legislation passing through this Legislature. We urge your favorable vote. Thank you for your time.

NORTHERN PLAINS RESOURCE COUNCIL

The Grassroots of Montana

SENATE NATURAL RESOURCES
EXHIBIT NO. 8
DATE 2/12/01
BILL NO. SB 277

Testimony of Richard Parks on SB-377

Mister Chairman, Members of the Committee, my name is Richard Parks. I own and operate a sporting goods store and fishing outfitting business in Gardiner, Montana. Obviously the maintenance of the high quality waters in which my business partners, the fish, swim is of primary importance to me. Today I am representing myself and Bear Creek Council. Bear Creek Council is a grass roots conservation organization with over 50 members in our community.

I appear today in opposition to SB-377. I know there are a flock of other witnesses so I wish to focus on just a few of the fatal flaws incorporated in this bill.

Section 1(3), beginning on page 1,line 18, sets up special access rights for "project sponsors". This does not seem to be a good or necessary idea. The Environmental Quality Council just completed an interim study of the Montana Environmental Policy Act (MEPA). The EQC did not find sponsor access to decision makers to be a serious problem. The way in which this language is crafted places particular burdens on the departments that consider proposed actions, their directors, and their boards that could paralyze their ability to perform their substantive functions. It will, at the same time, create a lengthy paper trail.

Section 1(2), beginning on page 1, line 14, transfers the chaos and gridlock created by sub(3) above to the EQC. This creates another kind of problem. In 30 years of engagement with environmental policy in Montana, I have repeatedly heard legislative and administrative bodies be told or say that their decisions "are to be based on science, not politics or emotion." Since EQC is a legislative committee this politicizes permitting decisions. Again, nothing in the interim study suggested a need or any value in making such changes.

The Montana Constitution delineates the rights and duties of citizens. The Constitution does not give "project sponsors" special rights that are denied to the general public. That is, I believe, what sections 1(2) and 1(3) attempt to do.

Turning now to Section 1(12), starting on line 30 of page 2 and continuing on page 3, we are concerned with the use of the term "cumulative impacts." The consideration of cumulative impacts is limited to "actions ... under concurrent consideration by any agency through pre-impact statement studies, separate impact statement evaluations, or permit processing procedures."

In the first place environmentally significant actions may be taking place concurrently or be readily foreseeable that are either not yet in the permitting pipeline or not be subject to agency review. Actions of local governments, particularly subdivision approvals, and actions taking place under general permits or categorical exclusions come to mind as examples.

2401 Montana Avenue #200◆ Billings, Montana 59101◆phone (406) 248-1154 ◆ fax (406) 248-2110
e-mail: info@nprcmt.org ◆ *web site:* www.nprcmt.org

In the second place, piecemeal permitting within an overall project may invite abuse. The debacle resulting from considering the Pony mill permit in isolation from the mine owned by the same parties but under a separate corporate shell is but one example of the results we can anticipate from this section of the bill if enacted.

There are many problems with this bill and I urge the committee to give it a DO NOT PASS vote.

Thank you for your attention.

SENATE NATURAL RESOURCES
EXHIBIT NO. 9
DATE 2/12/01
BILL NO. SB277

AGAINST SENATE BILL 377

TESTIMONY FROM HOPE STEVENS

Little Falcon Farm

HOPE B. (HOPIE) STEVENS • ROBERT T. (BOB) STEVENS, JR.

P.O. Box 1510, Helena, Montana 59624
Phone 406-442-9424
Fax 406-449-3668

1. I AM A MOTHER AND GRANDMOTHER AND I FEEL OWE WHAT I AM GOING TO SAY TO MY CHILDREN AND GRAND CHILDREN -!

WHEN I WAS ELEVEN OUR FAMILY, MY FATHER WHO WAS A WRITER, MY MOTHER + I AND MY TWO SISTERS HAD TO LEAVE FRANCE, OUR HOME THERE AND ALMOST EVERYTHING WE OWNED —

WE HAD LIVED THERE EVER SINCE I WAS BORN IN 1927 - WE WERE DEFINIELY ALL AMERICAN CITIZENS! —

WE HAD TO LEAVE BECAUSE OF A DICTATOR IN GERMANY WHO WAS DETERMINED TO TAKE OVER ALL OF EUROPE . . —

I MENTION THIS ONLY BECAUSE I am

Little Falcon Farm is located off the utility grid in rugged, mostly timbered foothills of the Rocky Mountain Front 20 miles NNW of Helena. If you plan to visit us, ask for driving instructions. If you plan to send us normal mail, overnight letters, or parcels, use the U.S. Postal Service, if possible. We stop by our P.O. box 2 or 3 times a week. If you must use UPS, FedEx, or other private carrier, ask us for an alternative address.

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(3) We could suddeny find that we will lose our right to speak our AT COMITTEE HEARINGS like this one or to question what may be decided for us in any way!-

IF there are to be no hearings on whatever industry is coming to the state and what this could mean to us. it can only mean there is must be something to hide from us. ——————

This is a situation all of us could regret someday.

My husband and I have been married 50 years now and we

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BEGINNING TO SEE SOME VERY DISTURBING (2)
TRENDS IN THIS STATE —

WHY ARE YOU TRYING TO DESTROY MEPA ?
WHY SHOULD THE PUBLIC NOT KNOW WHAT
SOME LARGE, OUT OF STATE, COMPANY
PLANS TO do in MONTANA? — SOME
BIG HEAVY HANDED CORPORATIONS SEEM TO HAVE
JOINTLY DECIDED WITH STATE GOVERNMENT THAT
THE MONTANA PUBLIC IS TOO STUPID TO KNOW
WHAT IS GOOD FOR THEM AND SO DECISIONS
WILL MORE AND MORE be made FOR US
SECRETLY
WHETHER we LIKE IT OR NOT. —

THAT IS NOT ONLY TAKING AWAY OUR RIGHT
TO KNOW, BUT IN THE NOT TOO DISTANT
FUTURE, IF THIS SORT OF THING CONTINUES

Little Falcon Farm

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(4) Have always found that if there is an important decision to be made in our lives it works out, by far the best, if we sit down and talk it over together before planning to go ahead - ! !

Please make certain that, as Citizens of Montana and of this wonderful Country, we keep our right to know and our Freedom of Speech -

Thankyou for your attention

SENATE NATURAL RESOURCES
EXHIBIT NO. 10
DATE 2/12/01
BILL NO. SB 377

FLATHEAD RESOURCE ORGANIZATION

P.O. Box 541 • St. Ignatius, Montana 59865
e-mail: fro@blackfoot.net • phone: (406) 644-2511 • fax: (406) 644-2516 • website:www.flatheadresource.org

February 12, 2001

SB 377, Sen. Duane Grimes (R-Clancy)

Testimony of Thompson Smith
Flathead Resource Organization

To the chair and members of the committee:

Thank you for providing this opportunity to comment on SB377 on behalf of some 300 members of the Flathead Resource Organization, a grassroots group based in St. Ignatius.

We strongly oppose SB 377 as an unwarranted and unnecessary weakening of the Montana Environmental Policy Act, the bedrock of Montana's environmental protection and a law that has worked very well since its passage in 1971. Just how unwarranted this bill is is reflected in the conclusions of the bipartisan body appointed by the Environmental Quality Council to study MEPA and recommend any needed changes in the law. After a year and a half of meetings and public hearings, this committee recommended only a few changes, none of which are part of this bill.

The time restrictions this bill imposes on the conducting of environmental studies are arbitrary and would result in permits being issued before the environmental impacts of the project are known. At the same time the sponsors of projects and other entities would be given opportunities to stall the project decision for a project involving school trust lands This could potentially be any school district in the State. The result would be the issuance of permits before the State or the citizens are aware of the full ramifications of the projects. This is a clear violation of the constitution's guarantee of our right to a clean and healthful environment.

We urge you to vote against SB 377. Thank you for this opportunity to comment.

FRO Board of Directors, 2001
Dr. Joseph McDonald, Ronan (President) • Patricia Hurley, Ravalli (Vice President) • Corwin Clairmont, Ronan (Treasurer)
Allen Hibbard, Polson • Thurman Trosper, Ronan • Richard Eggert, Dixon • Margaret Harriman, St. Ignatius • Tony Hoyt, Arlee
The Flathead Resource Organization (founded 1978) is a grassroots group dedicated to the protection & restoration of the environment of the lower Flathead River drainage system and surrounding area, and to the promotion of a sustainable and healthy human relationship with that environment.

Exhibit: 11

I am Dr. Starshine, a retired Helena public school teacher now living in Great Falls. I have come here to ask that you not "modernize" MEPA-a bill that has stood the test of time-30 years - in protecting my constitutional right to a clean & healthy environment & my right to participate in Montana governmental decisions. SB377 would by-pass important environmental review & consideration of cumulative impacts which certainly weaken MEPA & my right to a clean & healthy environment & my right to participate in Montana government decisions. Please do not pass SB377.

SENATE NATURAL RESOURCES
EXHIBIT NO. 12
DATE 2/12/01
BILL NO. SB 377

Testimony from Nancy Owens, Basin MT,
on SB 377
Hearings before the Senate Natural Resources Committee
February 12, 2001

I am testifying against SB 377.
I strongly favor MEPA in its current format, and believe it is working exactly as intended, and as is needed for Montana's economic growth and future. I oppose any changes to MEPA.

The conflict between ecological and economic goals is artificial. The ecological integrity of the planet, including, of course, Montana, is a precursor to economic well-being in the long run.

The Jobs vs Environment controversy is artificial. Declining jobs in natural resource industries are not caused by environmental regulations, but rather by improved technology, and the globalization of the economy. In other words, they are the natural result of "doing business," and corporations have led these efforts. However, it is corporately-fashionable (and lucrative) to blame environmental protection to keep the heat off anti-community acts of corporations.

The environmental protection measures, of which MEPA is Montana's cornerstone, ensure that our long-term economic health is sustainable, and Montana a good place to live. The long-term view of sustainability means ongoing jobs -- not just jobs tomorrow followed by wasteland and ghost towns.

Instead of weakening environmental measures, we should be enacting policies that encourage the development of sustainable industries. We need mechanisms to help communities forge collective visions of sustainable resource management. Sustainable agriculture is a case in point. Conventional agriculture is experiencing low market prices and higher costs of inputs and operation. Sustainable agriculture decreases input costs and is creating higher-value markets. Sustainable agriculture is in tune with new economic trends, and long-term economic viability.

Is environmental pollution good economic policy? NO.
Is a MEPA that doesn't allow adequate time for scientific studies, and for public input, good economic policy? NO.
Is a MEPA with no "teeth" for authorizing boards to require that we maintain a clean and healthful environment good economic policy? NO.

Research is growing daily in the area of sustainability standards. For example, in the field of forestry, researchers are getting ever closer to being able to scientifically say what indicators

(over)

determine sustainable management practices, and to provide the explicit information needed to modify management regimes and consumption patterns to align with sustainable practices.

WAIT. WAIT until accurate information becomes available. Be prudent rather than wasteful. The ecology is not as adaptable as humans are. It takes a long time to recover from errors -- from overuse and from poisonous waste products.

WAIT. Don't destroy our future.

SENATE NATURAL RESOURCES
EXHIBIT NO. 13
DATE 2/12/01
BILL NO. SB 377

I am Mark Fix and I own a ranch about 18 miles from Miles City on the Tongue River.

I am opposed to SB 377.

The time limits imposed with this bill cannot work. We are currently involved in a MEPA process for Coal Bed Methane (CBM) development. If time limits are imposed upon this EIS the data necessary to determine how development should proceed will not be available. The water discharged from the wells is unsuitable for irrigation. I believe that if time is not taken to get good data the developers will be allowed to dump this water into the Tongue River and it will sterilize approximately 40,000 acres of irrigated ground along the Tongue. We feel that soil samples should be taken to show the existing quality of the irrigated ground. The ground is frozen now and no soil samples can be obtained. It may be May or June before soil samples can be taken. Funding and grants for the Conservation districts to do this work take time.

This bill would have projects going ahead and then damages would be done. The only recourse the public would have would be to sue the project sponsors to correct the problems overlooked.

When I saw this bill I wondered what would happen if they wanted to develop a nuclear power plant in Montana. If adequate time were not spent on the EIS would a meltdown be acceptable? Let's use our heads, this process is designed to prevent problems from occurring.

I urge you to vote against this bill.

Mark Fix
HC 32, Box 4196
Miles City, Montana 59301
406-421-5460

SENATE NATURAL RESOURCES
EXHIBIT NO. 14
DATE 2/12/01
BILL NO. SB 377

KEEP MONTANA WORKING!

FOR OUR FAMILIES AND OUR ENVIRONMENT

The timely and necessary environmental movement that blossomed in the 1960's helped us, as a society, formulate some major, visionary laws designed to care for the planet we share.

In Montana, one such law was MEPA – the Montana Environmental Policy Act. Passed in 1971, it's stated goal is to provide "a productive and enjoyable harmony between humans and their environment."

It is now 2001. The well-intended laws we passed are showing their age. MEPA was to be a process by which we evaluated environmental impacts while providing food, clothing, shelter and energy for our human needs. MEPA is now too often abused by the environmental conflict industry as a tool to hinder, delay or stop environmentally sound projects that they don't 'like.' Montana families pay the price of this abuse in family wages (from near the top in our nation in the 1960's to near the bottom in 2000), our ability to fund quality schools, tax-base erosion and a litany of social ills that correspond to a culture in crisis.

It is time that MEPA is refined and modernized to meet the challenges of today. The current efforts of our legislators reflect their commitment to maintain environmental *standards* (the standards are not touched) while improving the *process* by which we meet these standards. These modernizations proposed by our legislators are not for 'business' – they are for the families that need businesses to quit choosing other places on the planet to locate their enterprises.

These modernizations will help us step toward a future when we can make a family wage in the places we call home without compromising our environment to do so.

We, the undersigned, support the passage of the following bills:
SB 33, SB 376, SB 377, SB 408, HB 459, HB 473, HB 477

NAME	ADDRESS	CITY, STATE, ZIP
Joe Gauthier	214 4th Ave NW	Cut Bank MT, 59427
Bob Mullen	Box 395	Hobson Mt 6945-
Earl Bricker	RT 1 Box 56	Moore, MT 59464
Ray Baker	#1 Baker Trail	Stanford MT 59479
Joyce Baker	#1 Baker Trail	Stanford MT 59479
Sam Graham	324 N. 18th	Bozeman, MT 59715
[illegible]	Box 1486	WEST GT 59937

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NAME	ADDRESS	CITY, STATE, ZIP
Patty Burns	PO BOX 1510 BIG TIMBER	59011
David Lichte	519 S. 9 Livingston ~~Expo~~	59047
Doug Hanson	2501 Westridge Dr. Bozeman, MT 59715	→
DAVE KREUGER	5100 HWY 1 WEST ANACONDA	→
John Esp	Box 102 Big Timber MT	59011
Jerry Furtney	P.O Box 98 1	Townsend, MT 59644
Joyce Johnson TRIBALS	20 REDWOOD	BUTTE MT 59701
~~BOBY~~ TRIBALS	20 REDWOOD	BUTTE, MT 59701
[illegible]	2500 Baily Rd	Hamilton 59840
[illegible]	2500 Baily Rd	Florence 59833
Darrell Wells	P.O. Box 125	Clancy, Mt. 59634
Jim Mockler	230 Colonial Dr	Helena 59601
Carol Mosher	The Box Ranch	Augusta 59410
Roland Mosher	" "	Augusta 59410
Gary Marks	Clancy MT 59634	
Kay Lynn Miller	167 Saddle Mtn Clancy MT 59634	
[illegible]	6065a HWY 191 Bozeman MT 59715	
[illegible]	5145 Hwy 93 S [illegible]	MISSOULA MT 59804

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NAME	ADDRESS	CITY, STATE, ZIP
Cynthia Hoover	Box 67	Rexford MT 59930
Jerri Anderson	Box 500	Eureka MT 59917
Tom Jones	315 Roxson	Butte MT, 59701
Scott Mendenhall	PO Box 1079	Whitefish 59937

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NAME	ADDRESS	CITY, STATE, ZIP
Colle Sny	PO Bx 248	Libby mt 59923

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NAME	ADDRESS	CITY, STATE, ZIP
FRED JANICKE	1308 2ND AVE NW	GT FALLS MT 59404
Jack Mahon	124 N. Walnut	Townsend MT
JAN & RON HARTMAN	P.O. Box 39	WILSALL, MT 59086
GENE NELSON	3926 Bellecrest	Missoula 59801
Beth Enter	29 Hidden Valley	Clancy MT 59634
[illegible] Woods	5300 Hwy 2, S.	Libby MT 59923
Claude Woods	" " "	" " "
Carol Guamon	237 Canfield Rd	Libby, MT 59923
David & Sarba	13333 Glidden Rd	Whitefish MT 59937
Carrie Cyull	430 Sheldon Ln	Libby MT 59923
Monica Meek	5190 Green Meadow	Helena, MT. 59602
Ed Regan	129 N. Cherry St.	Townsend MT 59644
[illegible]	Box 1557	Kalispell, MT 59903
[illegible]	Box 1557 HELENA MT	Kalispell, MT 59903
John Semple	1819 FLOWERREE	Helena, MT 59601

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NAME	ADDRESS	CITY, STATE, ZIP
Jason Todhunter	PO Box 221	Harlowton, MT 59036
Chuck Sammelson	127 Lake Hills Ct	Big Fork MT 59911
Steve Neuschwat	665 S. Davis	Helena MT 59601
Pat Jones	PO Box 224	Virginia City MT
Judy Jones	3115 Padon	Butte, MT 59701
John Fitzgerald	818 9th Ave	Helena, MT
Daniel P. Jay	PO Box 248	Libby 59923
[illegible]	65 Robbe Rd	Libby 59923
[illegible]	430 Sheldon Lane	Libby
Lois Croucher	65 Robbe Rd	Libby
Janice George	PO Box 334	Seeley Lake, MT 59868
[illegible]	" " "	" " "
Gary L Christo	7 Locust Loop	Bozeman 59715
Darrell Cooper	2100 Petty Rd	Alberton MT 59820
Austin Dillree	[illegible]	Alberton MT 59820
Larry Dillree	Box 91	Ovando MT 59854
Ida Herzog	Box 684	W.S.S. MT. 59645
[illegible]	[illegible]	[illegible]

KEEP MONTANA WORKING!

FOR OUR FAMILIES AND OUR ENVIRONMENT

The timely and necessary environmental movement that blossomed in the 1960's helped us, as a society, formulate some major, visionary laws designed to care for the planet we share.

In Montana, one such law was MEPA – the Montana Environmental Policy Act. Passed in 1971, it's stated goal is to provide "a productive and enjoyable harmony between humans and their environment."

It is now 2001. The well-intended laws we passed are showing their age. MEPA was to be a process by which we evaluated environmental impacts while providing food, clothing, shelter and energy for our human needs. MEPA is now too often abused by the environmental conflict industry as a tool to hinder, delay or stop environmentally sound projects that they don't 'like.' Montana families pay the price of this abuse in family wages (from near the top in our nation in the 1960's to near the bottom in 2000), our ability to fund quality schools, tax-base erosion and a litany of social ills that correspond to a culture in crisis.

It is time that MEPA is refined and modernized to meet the challenges of today. The current efforts of our legislators reflect their commitment to maintain environmental *standards* (the standards are not touched) while improving the *process* by which we meet these standards. These modernizations proposed by our legislators are not for 'business' – they are for the families that need businesses to quit choosing other places on the planet to locate their enterprises.

These modernizations will help us step toward a future when we can make a family wage in the places we call home without compromising our environment to do so.

We, the undersigned, support the passage of the following bills:
SB 33, SB 376, SB 377, SB 408, HB 459, HB 473, HB 477

NAME	ADDRESS	CITY, STATE, ZIP
David Boyles		Cut Bank, MT 59427
Cory Farmer	120 Manor Drive	Libby, MT 59923
Bunny Hamm	5935 St. Francis Dr	Missoula, MT 59803
Stephen Lyon	PO Box 389	Deer Lodge MT 59722
Bob Ellerton	116 HARWOOD	HELENA, MT 59601
Mark Bu	3219 1st Ave N.	Great Falls MT 59401
Don Serlin	216 Sentinel MSLA 59801	Mola, MT 59801
Sheila Keller	183 Fairmont Rd	Kalispell, MT 59901
Joe Keller	183 Fairmont	"
Rules Nelson	PO Box 1043	Townsend MT 59644
Patricia Nelson	134 N Walnut	Townsend MT 59644
Ted Antonioli	5907 Longview	Missoula MT 59803
Delila Croucher	605 Robbs Rd Libby, MT 59923	
Angela Janaccaro	202 S Harrison	Townsend 59644
Pam Langley	1806 Capitol	Helena, MT 59601

The following exhibit
exceeds 10 pages.

Exhibit 15
2.12.01
SB 377

The complete exhibit is located with the minutes are at the
Montana Historical Society Archives
225 North Roberts
Helena, Mt 59620-1202
(406) 444-4775

MONTANA SENATE
2001 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL SB 408 / SB 377 DATE 02/12/01

NAME	PRESENT	ABSENT	EXCUSED
SEN. WILLIAM (BILL) CRISMORE, CHAIRMAN	✓		
SEN. DALE MAHLUM, VICE CHAIRMAN	✓		
SEN. VICKI COCCHIARELLA	✓		
SEN. MACK COLE	✓		
SEN. LORENTS GROSFIELD	✓		
SEN. BEA MCCARTHY	✓		
SEN. KEN MILLER ~~excused~~	✓		
SEN. GLENN ROUSH	✓		
SEN. BILL TASH	✓		
SEN. MIKE TAYLOR (excused)			✓
SEN. KEN TOOLE	✓		

DATE 02/12/01

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 377 and SB 408

PLEASE PRINT

	NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE	
	Starshine	453-6372	MWA	376/377			
1	Howard Strause	7278466	Audubon	377		✓	
	Mary Fay	727-7516	Audubon	377		✓	
7	Beth Kaeding	5855644	self	377		✓	
	Jim Currie	444-6201	MBT	377/408			info
8	Richard Parks	848-7314	bcc - MPA	377		✓	
9	Hope Stevens	442-9424	MYSELF	377		✓	
	Paul Buckley	533-0465	Self.	376 377	✓		
	Tony Majerus	287-3533	SELF	376 377	✓		
	Everhard Jones	494-4579	Self & Family	376/377	✓		
2	Jeff Barbe	439-6340	MT Wildlife Federation MT Chapter American Fisheries Society	377/408	408	X	
	JIM SIMPSON	587-2580	SELF	377/376	X		
	Steve Kelly	582-0998	~~FRIENDS OF THE~~ WILD SWAN	377/408		X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 02/12/01

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 377 and SB 408

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
James N. Sweeney	848 7602		377		X
Jerry Furtney	949-1531	Self	408 377	X	
David L Scuba	7281921	Local 885 PACE Int	377	X	
Al Kingston	458-5286	Self	408 377	X	
Dave Reuecker	563-7328	Self	408 377	X	
Theresa Keaveny	254-1593	Montana Conservation ed Fund Voters	377		X
Dexter Busby	761-4100	Montana Refining	408 377	X	
Leland Griffin	"	Montana Refining	408 377	X	
Cary Hegreberg	3-1566	Wood Products Assn.	408 377	X	
FRED JANICKE	4526871	PACE LOCAL 8-491	408 377	X	
Steve Pilcher	442-3420	MT Stockgrowers	408 377	X X	
Kathleen Miller	449-4541		377	X	
Earl Bridges	374-2554	MT Farm Bureau	377	X	

VISITOR REGISTER

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DATE 02/12/01

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB377 and SB408

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Anne Hedges	443-2500	MEIC	377 408	x	x
Harold Young	246-3394	Flathead Resource Org	SB377		x
Joyce Baker	566-2625	League of Rural	377 408	✓	
Marilyn Brown	727-4489	Farm Bureau	377 408	✓	
Ray Baker	566-2625	Farm Bureau	377 408	✓	
Matt Clifford	542-0539	Clark Fork Coalition	377 408		x
John Youngberg	442-8476	MT Farm Bureau	377 408	x x	
Frank Kearney	443-2211	ASARCO	377 408	x x	
Nancy Owens	225 9225	Self	377 408		x
Barry Stang 442-66~~08~~	~~SB377 SB408~~	MT Motor Carrier	SB377 408	x x	
Christi Pilcher	443-2642	Self	377 408	x x	
Penny Fassnacht	721-5805	H&F Logging Inc.	377 408	x x	
Patrick Hoffman	752-2168	MCA	377 408	x x	

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DATE 02/12/01

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 377 and SB 408

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Jim Mockler	442-6523	MT Coal Council	SB377 SB408	X	
John Semple	443-7487	MT CATTLEWOMEN MT STOCKGROWER ASSN	SB 377 SB 408	X X	
GAIL ABERCROMBIE	442-7582	MT Petroleum Assn	SB 377 SB 408	X X	
John Semple	443-7487	Assoc of MT. AERIAL APPLICATORS MT Agricultural Business Assn	SB377 SB408	X X	
Margaret Morgan	449-4433	MT Petroleum Marketers	SB 377 SB408	X	
Don Allen	443-5541	WETA	SB377 SB 408	X	
Steve Thompson	862-3795	MT Conservation Voters	SB377		X
Peggy Trenk	443-4032	MT Assoc. of Billings Chamber	SB377 + 408	X	
Jay Ruarda	227-6937	Self	SB377 408	X	
TODD O'HAIR		GOV. MARTZ	SB 377 408	X	
Roger DeBruycker	452-6537	Flowerree	SB377 408	X	
Tim Ryan	293-3521	Larex, Inc		X	
Aidan Mythre	442-6383	MT Chamber	SB377 408	✓	

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DATE 2/12/01

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 377, SB 408

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Ed Eggleston	293-8539	Myself	377	✓	
M.S. KAKUK	457-0970	NAT. CONTRACTORS ASSN	408	✓	
"	"	"	377	✓	
Scott Mendenhall	287-3282	Jeff Local Gov. Com	377	✓	
Martin L Johnson	287-2160	Self	377	✓	
Martin L Johnson	287-2160	Self	~~408~~ 377	✓	
Ed REGAN	266-3111	RY TIMBER	377	✓	
Tommy Johnson	287-3012	League of Rural Voters	408 377	✓	
Rudy KETCHUM	287 3306	self/Whitehall Chamber	408 377	✓	
STEVEN SCHWAB	287-3465	Self	408 377	✓	
DARRELL SCHARF	287-5802	SELF Whitehall	408 377	✓	
ELLEN GSTAT	443-1866	MT WOOD PRODUCTS	377	✓	
Ronald Buentemeier	~~862~~ ~~3897~~	F.H. Stoltze Land & Lbr & Self	377		

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DATE 2/12/01

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: S Bill - 377

SB 408

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Gary Marks	933 5981	Self	377	✓	
Donna Stanton	752-5223	Self, logging contractor	408 377	✓	
[illegible]	752-5688	THorco INC	408 377	✓	
Julie Martin	266-3208	self, family logging business	408 377	✓	
Patricia M. Mahon	266-3806	Self.	408 377	✓	
Jack Mahon	266-3806	Self	408 377	✓	
Stephen J Flynn	846-1600	Self	408 377	✓	
Michael Lynaugh	756 3030	self	408 377	✓	
JANET HARTMAN	220 0458	SELF	408 377	✓	
Ron HARTMAN	220-0458	SELF	408 377	✓	
ANGELA JANFARO	980-1644	MT Mining Assn.	408 377	✓	
Pete Wendom	293-7781	Lincoln County	408 377	✓	
Joe Keller	756-7168	Self	408 377	✓	

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DATE 2/12/01

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: S Bill 377 & 408

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Sheila K Keller	756-7168	Self - Montana Women in Timber	408 377	✓	
Matthew Leow	495-9345	MontPIRG	377		X
Patrick M. Montoya	873-2345	NMoCA	408 377	✓	
CAROL CRISMORE	293 7405	Self	408 377	✓	

VISITOR REGISTER

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MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on February 17, 2001 at 3:10 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Bill Tash (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: Sen. Dale Mahlum, Vice Chairman (R)

Members Absent: None.

Staff Present: Nancy Bleck, Committee Secretary
Mary Vandenbosch, Legislative Branch

Also Present: Michael Kakuk, Attorney At Law
John North, Chief Legal Counsel, Legal Unit, Montana Department of Environmental Quality
Anne Hedges, Montana Environmental Information Office
Cary Hegreberg, Montana Wood Products Association
Bud Clinch, Director, Montana Department of Natural Resources and Conservation

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: Executive Action posted on February 13, 2001
Executive Action: SB 377, SB 376, SB 408, SB 322, SB 364, SB 354, SB 83, and SB 375

Executive Action: SB 377, SB 376, SB 408, SB 322, SB 364, SB 354, SB 83, and SB 375

EXECUTIVE ACTION ON SB 377

SB 377 was a bill for an act revising the Montana Environmental Policy Act; providing time limits for conducting environmental reviews; providing definitions; requiring that administrative or legal challenges to actions under the Montana Environmental Policy Act be brought within 30 days of a decision; and amended Section 75-1-201 of the Montana codes.

SEN. LORENTS GROSFIELD moved the amendments to **SB 377** for discussion. **Michael Kakuk**, who helped with the drafting of **SB 377**, offered explanation of the amendments requested by the sponsor of the bill. These amendments were proposed in response to the fiscal note concerning the Montana Department of Environmental Quality, the Montana Department of Natural Resources and Conservation, and the Montana Department of Transportation. **Mr. Kakuk** stated that the amendments addressed the technical concerns, inconsistencies, conflicts, but did not address the underlying policy issues that were raised by the department's testimony at the hearing. He went on to explain the changes proposed and provided a copy of those amendments, **EXHIBIT(nas40a01), (SB037701.amv)**. He also provided **EXHIBIT(nas40a02)**, the "unauthorized grey bill of **SB 377** with proposed sponsor's amendments". **Mr. Kakuk** stated the first three changes involved the title. Amendment number four had an insertion which led to amendment number five which was the "meat" of the amendment. **Mr. Kakuk** said this exemption was needed in case there was a conflict between the National Environmental Policy Act (NEPA) and the Montana Environmental Policy Act (MEPA). There was concern that certain agencies prepared many joint national and Montana act environmental reviews and it often led to two separate documents, two different review processes and to, possibly, two different alternative reviews. The provisions of **SB 377** would preclude compliance with the national average. The language in the amendment was prepared by **John North, Chief Legal Counsel, Legal Unit, DEQ**, and removed that conflict. This exemption simply said that if there was anything in the National Environmental Policy Act (NEPA) that would preclude compliance with the Montana Environmental Policy Act (MEPA), then MEPA would win. **Mr. Kakuk** also pointed out that in current law, the definition of the term "cumulative impact" never spoke of future actions. **SB 377** would clearly define that term to include past, present, and future actions which would be under concurrent review. It also better defined the beneficiaries of school trust

lands and addressed the time issues with the public scoping process. **Mr. Kakuk** stated that this bill would amend some of the time limits and make them clearer by better defining them. ***{Tape : 1; Side : A; Approx. Time Counter : 6.2 - 22.2}***

Mary Vandenbosch, legislative staffer, had one area to confirm on amendment number 12 referencing the correct chapter number. Under direction of the chairman, **Ms. Vandenbosch** will confirm that chapter number and, if needed, correct that in the amendment. There were no added questions regarding the amendments. Final combined amendment received on February 19, 2001, as **EXHIBIT(nas40a03), (SB037702.amv).** ***{Tape : 1; Side : A; Approx. Time Counter : 22.2 - 24}***

Motion/Voice Vote: SEN. GROSFIELD moved that **AMENDMENTS TO SB 377 BE ADOPTED. Motion carried unanimously. Vote 11-0. Proxy vote by VICE-CHAIR DALE MAHLUM was included.**

Motion: SEN. TASH moved that **SB 377 DO PASS AS AMENDED.**

Discussion: SEN. LORENTS GROSFIELD questioned language in the bill on page two, line 30, where it stated an agency "may" and thought it should be changed to "shall". **Mr. Kakuk** advised he felt that language revision would not make any difference from a legal standpoint.

Motion/Voice Vote: SEN. GROSFIELD moved that **SB 377 BE AMENDED** by changing the language on the bill on page two, line 30, where it stated an agency "may" to an agency "shall" . **Motion carried unanimously. Vote was 10-0. VICE-CHAIR DALE MAHLUM** was excused.

Additional Discussion: SEN. KEN TOOLE opposed the bill as he thought the current statutes relating to MEPA were working fine. **SEN. BILL TASH** related an experience in his district concerning the issues being addressed by **SB 377** and said he felt it was a well deserved change. **SEN. VICKI COCCHIARELLA** stated she felt the frustration of the people of Montana when it came to economic development, especially relating to her part of the state concerning impacts on timber sales on state lands and other issues. She did not feel that MEPA was the problem but that the issues went back to inefficiency, ineffective leadership, and lack of resources to make the Department of Environmental Quality (EQC) the agency it should be. She also stated that by passing this kind of legislation, we were not going to accomplish what it had intended to accomplish because we were still not staffing and funding at levels that we needed to in order to retain good people in the DEQ who could perform their job in a timely

fashion.*{Tape : 1; Side : A; Approx. Time Counter : 24 - 32.9}* *{Tape : 1; Side : B; Approx. Time Counter : 0 - 1.2}* **SEN. BEA MCCARTHY** stated she could only echo what **SEN. COCCHIARELLA** stated as she believed the DEQ was understaffed and did not have the personnel staying there. She also stated that most of the material in this bill was not brought up at any time during the study and was all new material brought in as a public bill. **SEN. MCCARTHY** stated she was opposed to this particular piece of legislation.*{Tape: 1; Side: B; Approx. Time Counter : 1.2 - 1.8}* **SEN. GLENN ROUSH** said that though he never served on the Environmental Quality Council and was pretty new to that area, he did come from a background of natural resource development. He stated he had sympathy for some of the concerns that had been mentioned in the hearing of this bill on both sides of the issue and he spent the last couple of days talking to people around the Conrad area. He added that the Great Falls Tribune, this last week, had addressed news that a serious proposal was coming to Conrad. **SEN. ROUSH** said there were over 200 people at the public hearing the other evening that came out in very bad weather, to hear about a very large, hog operation coming in to that area. In talking to at least four or five concerned people, they all told him they did not object to the project as of yet. They wanted an open discussion, open planning, and participation from the public on a lot of these decisions. The company proposing the operation stated the same and did not want to hide anything from the public. He said that the people of his district had to live with whatever developed as they needed economic development. **SEN. ROUSH** thought there was time to continue to review this issue. There was a study that had been proposed, to be acted on in this committee, to include some of the MEPA problems. As **SEN. MCCARTHY** had stated that this material had not come up for study beforehand, **SEN. ROUSH** thought the issue could be addressed with the proposed study.*{Tape: 1; Side: B; Approx. Time Counter: 1.8 - 4.3}* **CHAIRMAN CRISMORE** commented that timber sales had been worked on in various areas, especially in the Swan Valley. The state had hired the best people they could find outside of the department. He knew there were people that were considered "expert" in the field, from mine skidding, and different foresters, that were contracted by the state to come in. It appeared there were still problems.

CHAIRMAN CRISMORE brought back to the table the motion made by **SEN. TASH** earlier.

Discussion: **SEN. GROSFIELD** said there was a lot of testimony provided at the hearing of **SB 377** and referred to his four pages of notes of specific problems brought up by many proponents. He

stated the EQC spent a lot of time on this bill and it was a recommendation that continued with study that would probably go on regardless of what was done here. MEPA was something that the EQC always spent a lot of time on. He stated that it seemed to him that there was just a terrific amount of frustration out there over our processes; not only on the part of how the MEPA process affected actual applicants but some of the frustration that was perceived outside of the state. Companies did not even want to try Montana because of what they heard was going on with MEPA. **SEN. GROSFIELD** said that this issue needed to be addressed. He stated he heard one of the proponents talking about being ashamed of the fact that Montana was a natural resource state. **SEN. GROSFIELD** proclaimed that Montana was a natural resource state and that was Montana's strength. He added that, somehow, Montana was almost ashamed of that fact and there was not reason for that. We should be proud of that fact and be proud of these kinds of projects and a state that has strong environmental laws. Some people wanted to shut it all down in Montana and let it be done elsewhere. The bottom line was that it was being done elsewhere where there were not good environmental laws. **SEN. GROSFIELD** thought that we should do this kind of thing where we did have good environmental laws and we ought to be encouraging it. He felt that **SB 377** and some of the other bills sent an encouraging signal without substantively affecting our environmental laws and standards in a negative way. **SEN. GROSFIELD** supported **SB 377.**
{Tape : 1; Side : B; Approx. Time Counter : 4.3 - 8.9}

ROLL CALL VOTE: Motion that **SB 377 DO PASS AS AMENDED carried 7-4 with Roush, Cocchiarella, Toole, and McCarthy voting no. Proxy vote by VICE-CHAIR DALE MAHLUM was included.**
{Tape : 1; Side : B; Approx. Time Counter : 8 - 10.5}

EXECUTIVE ACTION ON SB 376

SEN. MIKE TAYLOR moved **SB 376** for discussion.

Discussion: **CHAIRMAN CRISMORE** advised there were two sets of amendments, and they would be looked at separately.

Motion: **SEN. TAYLOR** moved that **AMENDMENTS TO SB 376 EXHIBIT(nas40a04) (SB037601.amv) BE ADOPTED.**

Discussion: **SEN. TAYLOR** explained the amendment **(SB037601.amv)** in that following "relation to" on page 1, line 24 of the bill, "and in compliance with" would be inserted. He stated that local government would be or could be involved with these decisions and

SENATE NATURAL RESOURCES
EXHIBIT NO. 1 (PAGE 1 OF 4)
DATE 02/17/01
BILL NO. SB377

Amendments to Senate Bill No. 377
1st Reading Copy

Requested by Senator William Crismore

For the Senate Natural Resources Committee

Prepared by Mary Vandenbosch
February 17, 2001 (2:17PM)

1. Title, line 5.
Following: "LIMITS"
Insert: "AND PROCEDURES"

2. Title, line 7.
Strike: "AND"

3. Title, line 8.
Following: "MCA"
Insert: "; AND PROVIDING AN APPLICABILITY DATE"

4. Page 1, line 12.
Following: "(1)"
Insert: "(a)"
Strike: "An"
Insert: "Except as provided in subsection (1)(b), an"

5. Page 1.
Following: line 13
Insert: " (b) To the extent that the requirements of this section are inconsistent with federal requirements, the requirements of this section do not apply to an environmental review that is being prepared jointly by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that must comply with the requirements of the National Environmental Policy Act."

6. Page 1, line 27.
Strike: "shorter"
Insert: "other"
Strike: "otherwise"

7. Page 1, line 29.

SENATE NATURAL RESOURCES
EXHIBIT NO. 1 (PAGE 2 OF 4)
DATE 02/17/01
BILL NO. SB 317

Strike: "30"
Insert: "60"

8. Page 2, line 11.
Following: "any"
Insert: "portion of a"

9. Page 2, line 13.
Following: "(8)"
Insert: "(a)"
Strike: "If"
Insert: "Except as provided in subsection (8)(b), if"

10. Page 2, line 15.
Strike: "clear" through "any,"
Insert: "written finding"

11. Page 2, line 16 through line 19.
Strike: "If" on line 19 through "any." on line 19

12. Page 2.
Following: line 19
Insert: "(b) Subsection (8)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82, chapter 1 or 2."

13. Page 2, line 20.
Strike: "An"
Insert: "Under this part, an"

14. Page 2, line 21.
Following: "review"
Insert: "required"
Strike: "the provisions of"

15. Page 2, line 29.
Following: "issue."
Insert: "The period of time between the request for a review by a board and completion of a review by a board under this subsection may not be included for the purposes of determining compliance with the time limits established for

SENATE NATURAL RESOURCES
EXHIBIT NO. 1 (PAGE 3 OF 4)
DATE 02/7/01
BILL NO. SB 377

environmental review in this section."

16. Page 3, line 18.
Following: "means"
Insert: ", unless otherwise provided by law,"

17. Page 3, line 22.
Following: "past"
Insert: ","
Strike: "and"
Following: "present"
Insert: ", and future"

18. Page 3, line 30.
Following: "each"
Insert: "institutional"
Following: "trust"
Insert: "as described in The Enabling Act of congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 328)"

19. Page 4, line 2.
Strike: "or" through "review"

20. Page 4, line 9.
Following: "(b)"
Insert: "under this part,"

21. Page 6, line 13.
Following: "(a)"
Insert: "A challenge to an agency action under this part may only be brought against a final agency action."
Strike: "an"
Insert: "a final"

22. Page 6.
Following: line 24
Insert: "NEW SECTION. **Section 5. Applicability.** [This act] applies to environmental reviews that are begun after [the effective date of this act]."

SENATE NATURAL RESOURCES
EXHIBIT NO. 1 (PAGE 4 OF 4)
DATE 02/17/01
BILL NO. SB 377

- END -

SENATE NATURAL RESOURCES
EXHIBIT NO. 2 (MR. KAKUK)
DATE 02/17/01
BILL NO. SB 377

UNAUTHORIZED GREY BILL OF SB 377 WITH PROPOSED SPONSOR'S AMENDMENTS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA ENVIRONMENTAL POLICY ACT; PROVIDING TIME LIMITS FOR CONDUCTING ENVIRONMENTAL REVIEWS; PROVIDING DEFINITIONS; REQUIRING THAT ADMINISTRATIVE OR LEGAL CHALLENGES TO ACTIONS UNDER THE MONTANA ENVIRONMENTAL POLICY ACT BE BROUGHT WITHIN 30 DAYS OF A DECISION; AND AMENDING SECTION 75-1-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Environmental review procedure.** (1) ~~An~~ "(a) **EXCEPT AS PROVIDED IN (B), AN** agency shall comply with this section when completing any environmental review required under this part.

(B) AN AGENCY THAT IS ENGAGED WITH A FEDERAL AGENCY IN PREPARING A JOINT STATE-FEDERAL ENVIRONMENTAL REVIEW OR THAT IS PREPARING AN ENVIRONMENTAL REVIEW THAT MUST COMPLY WITH THE NATIONAL ENVIRONMENTAL POLICY ACT, 42 U.S.C. 4321 ET SEQ., NEED NOT COMPLY WITH ANY PROVISION OF THIS SECTION THAT IS INCONSISTENT WITH FEDERAL TIMEFRAMES OR REQUIREMENTS FOR THAT ENVIRONMENTAL REVIEW.

(2) A project sponsor may, after providing a 30-day notice, appear before the environmental quality council at any regularly scheduled meeting to discuss issues regarding the agency's environmental review of the project. The environmental quality council shall ensure that the appropriate agency personnel are available to answer questions.

(3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the agency regarding an environmental review, the project sponsor may submit a written request to the agency director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow the agency to prepare for the meeting. If the issues remain unresolved after the meeting with the agency director, the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency and the board to prepare for the meeting.

(4) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental review process, an agency is subject to the time limits listed in this subsection (4) unless ~~shorter~~ time limits are otherwise provided by law. All time limits are measured from the date the agency receives a complete application. An agency has:

(a) ~~30~~ **60** days to complete a public scoping process, if any;

(b) 90 days to complete an environmental review unless a detailed statement pursuant to 75-1-201(1)(b)(iv) is required; and

(c) 365 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).

(5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing that an extension is necessary and stating the basis for the extension. The agency may extend the time limit only one time, and the extension may not exceed 50% of the original time period as listed in subsection (4).

(6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(7) An agency may not assess fees to a project sponsor for any **PORTION OF A** review that exceeds the original time period, regardless of whether or not the time period was extended.

(8) ~~If~~ **(A) EXCEPT AS PROVIDED IN SUBSECTION (8)(B), IF** an agency has not completed the environmental review by the expiration of the original or extended time period, the agency may not withhold a permit or other authority to act unless the agency makes a ~~clear showing to the appropriate board, if any,~~ **WRITTEN DETERMINATION** that there is a substantial likelihood that permit issuance or other approval to act would result in the violation of a statutory or regulatory requirement. ~~If the agency conducting the environmental review is also the project sponsor and if the agency has not completed the review by the expiration of the original or extended time period, the decision as to whether or not to proceed with the project must be made by the appropriate board, if any.~~

(B) SUBSECTION (8)(A) IS NOT APPLICABLE TO A PERMIT GRANTED PURSUANT TO TITLE 75, CHAPTER 2, OR TITLE 82, CHAPTER 1 OR 2.

(9) An agency may only request that information from the project sponsor **UNDER THE PROVISIONS OF THIS PART** that is relevant to the environmental review under the provisions of this part.

(10) An agency shall ensure that the notification for any public scoping process associated with an environmental review conducted by the agency is presented in an objective and neutral manner and that the notification does not speculate on the potential impacts of the project.

(11) An agency may not require the project sponsor to provide engineering designs in greater detail than that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate board, if any, review an agency's request regarding the level of design detail information that the agency believes is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. **ANY DELAY CAUSED IN THE ENVIRONMENTAL REVIEW BY A REQUEST FOR A BOARD REVIEW UNDER THIS SUBSECTION WILL NOT COUNT AGAINST THE TIME PERIOD FOR THE ENVIRONMENTAL REVIEW SET OUT IN SUBSECTION (8).** (Note: Proposed Language Only)

(12) An agency may, when appropriate, consider the cumulative impacts of a proposed project. However, related future actions may only be considered when these

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EXHIBIT NO. 2 MR. KAKUK
DATE 02/17/01
BILL NO. SB317

actions are under concurrent consideration by any agency through preimpact statement studies, separate impact statement evaluations, or permit processing procedures.

NEW SECTION. **Section 2. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Appropriate board" means, for administrative actions taken under this part by the:

(a) department of environmental quality, the board of environmental review as provided for in 2-15-3502;

(b) department of fish, wildlife, and parks, the fish, wildlife, and parks commission as provided for in 2-15-3402;

(c) department of transportation, the transportation commission as provided for in 2-15-2502;

(d) department of natural resources and conservation for state trust land issues, the board of land commissioners as provided for in Article X, section 4, of the Montana Constitution;

(e) department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation as provided for in 2-15-3303; and

(f) department of livestock, the board of livestock as provided for in 2-15-3102.

(2) "Complete application" means**, UNLESS OTHERWISE PROVIDED BY LAW,** an application for a permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures required to be included with the application by the applicable statutes and rules.

(3) "Cumulative impacts" means the collective impacts on the human environment of the proposed action when considered in conjunction with other past**,** ~~and~~ present**, AND FUTURE** actions related to the proposed action by location or generic type.

(4) "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis required under this part by an agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment.

(5) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an action that requires an environmental review. If the action involves state trust lands, the term also includes each **INSTITUTIONAL** beneficiary of any trust **IDENTIFIED IN THE ENABLING ACT OF 18 __**.

(6) "Public scoping process" means any process to determine the scope of an environmental review ~~or otherwise solicit public comments relating to an environmental review~~.

Section 3. Section 75-1-201, MCA, is amended to read:

SENATE NATURAL RESOURCES
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DATE
BILL NO.

"75-1-201. General directions -- environmental impact statements. ~~(1) The~~ legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except the legislature and except as provided in subsection (2), shall **UNDER THE PROVISIONS OF THIS PART**:

(i) use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment;

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action;

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity; and

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(v) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(vi) recognize the national and long-range character of environmental problems and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

SENATE NATURAL RESOURCES
EXHIBIT NO. 2 (MR. KAKUK)
DATE 02/17/01
BILL NO. SB 377

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved. The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law.

(b) When new, material, and significant evidence is presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court considers the evidence within the administrative record under review. Immaterial or insignificant evidence may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

(4) (a) A CHALLENGE TO AN AGENCY ACTION UNDER THIS PART MAY ONLY BE BROUGHT AGAINST A FINAL AGENCY ACTION

(B) Any action or proceeding challenging ~~an~~ A FINAL agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 30 days of the action that is the subject of the challenge.

~~(b)~~ (C) Any action or proceeding under subsection (4)(a) that is brought before an administrative board or hearings examiner must take precedence over other cases or matters before the board or hearings examiner.

~~(c)~~ (D) Any action or proceeding under subsection (4)(a) that is brought before a district court must take precedence over other cases or matters in the district court unless otherwise provided by law."

NEW SECTION. **Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 75, chapter 1, part 2, and the provisions of Title 75, chapter 1, part 2, apply to [sections 1 and 2].

NEW SECTION. SECTION 5. APPLICABILITY. [THIS ACT] APPLIES TO ENVIRONMENTAL REVIEWS THAT ARE BEGUN AFTER [THE EFFECTIVE DATE OF THIS ACT].

- END -

SENATE NATURAL RESOURCES
EXHIBIT NO. 3 (PAGE 1 OF 4)
DATE 02/19/01
BILL NO. SB377

Amendments to Senate Bill No. 377
1st Reading Copy

For the Senate Natural Resources Committee

Prepared by Mary Vandenbosch
February 19, 2001 (1:05PM)

1. Title, line 5.
Following: "LIMITS"
Insert: "AND PROCEDURES"

2. Title, line 7.
Strike: "AND"

3. Title, line 8.
Following: "MCA"
Insert: "; AND PROVIDING AN APPLICABILITY DATE"

4. Page 1, line 12.
Following: "(1)"
Insert: "(a)"
Strike: "An"
Insert: "Except as provided in subsection (1)(b), an"

5. Page 1.
Following: line 13
Insert: " (b) To the extent that the requirements of this section are inconsistent with federal requirements, the requirements of this section do not apply to an environmental review that is being prepared jointly by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that must comply with the requirements of the National Environmental Policy Act."

6. Page 1, line 27.
Strike: "shorter"
Insert: "other"
Strike: "otherwise"

7. Page 1, line 29.

SENATE NATURAL RESOURCES
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DATE 02/19/01
BILL NO. SB317

Strike: "30"
Insert: "60"

8. Page 2, line 11.
Following: "any"
Insert: "portion of a"

9. Page 2, line 13.
Following: "(8)"
Insert: "(a)"
Strike: "If"
Insert: "Except as provided in subsection (8)(b), if"

10. Page 2, line 15.
Strike: "clear" through "any,"
Insert: "written finding"

11. Page 2, line 16 through line 19.
Strike: "If" on line 19 through "any." on line 19

12. Page 2.
Following: line 19
Insert: "(b) Subsection (8)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82, chapter 4, parts 1 and 2."

13. Page 2, line 20.
Strike: "An"
Insert: "Under this part, an"

14. Page 2, line 21.
Following: "review"
Insert: "required"
Strike: "the provisions of"

15. Page 2, line 29.
Following: "issue."
Insert: "The period of time between the request for a review by a board and completion of a review by a board under this subsection may not be included for the purposes of determining compliance with the time limits established for

SENATE NATURAL RESOURCES
EXHIBIT NO. 3 (PAGE 3 OF 4)
DATE 02/19/04
BILL NO. SB 377

environmental review in this section."

16. Page 2, line 30.
Strike: "may"
Insert: "shall"

17. Page 3, line 18.
Following: "means"
Insert: ", unless otherwise provided by law,"

18. Page 3, line 22.
Following: "past"
Insert: ","
Strike: "and"
Following: "present"
Insert: ", and future"

19. Page 3, line 30.
Following: "each"
Insert: "institutional"
Following: "trust"
Insert: "as described in The Enabling Act of congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 328)"

20. Page 4, line 2.
Strike: "or" through "review"

21. Page 4, line 9.
Following: "(b)"
Insert: "under this part,"

22. Page 6, line 13.
Following: "(a)"
Insert: "A challenge to an agency action under this part may only be brought against a final agency action."
Strike: "an"
Insert: "a final"

SENATE NATURAL RESOURCES
EXHIBIT NO. 3 PAGE 4 OF 4
DATE 02/19/01
BILL NO. SB 377

23. Page 6.
Following: line 24
Insert: "NEW SECTION. **Section 5. Applicability.** [This act] applies to environmental reviews that are begun after [the effective date of this act]."

- END -

SENATE NATURAL RESOURCES
EXHIBIT NO. 3 PAGE 1 OF 4
DATE 02/19/01
BILL NO. SB377

Amendments to Senate Bill No. 377
1st Reading Copy

For the Senate Natural Resources Committee

Prepared by Mary Vandenbosch
February 19, 2001 (1:05PM)

1. Title, line 5.
Following: "LIMITS"
Insert: "AND PROCEDURES"

2. Title, line 7.
Strike: "AND"

3. Title, line 8.
Following: "MCA"
Insert: "; AND PROVIDING AN APPLICABILITY DATE"

4. Page 1, line 12.
Following: "(1)"
Insert: "(a)"
Strike: "An"
Insert: "Except as provided in subsection (1)(b), an"

5. Page 1.
Following: line 13
Insert: " (b) To the extent that the requirements of this section are inconsistent with federal requirements, the requirements of this section do not apply to an environmental review that is being prepared jointly by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that must comply with the requirements of the National Environmental Policy Act."

6. Page 1, line 27.
Strike: "shorter"
Insert: "other"
Strike: "otherwise"

7. Page 1, line 29.

SENATE NATURAL RESOURCES
EXHIBIT NO. 3 (PAGE 2 OF 4)
DATE 02/19/01
BILL NO. SB311

Strike: "30"
Insert: "60"

8. Page 2, line 11.
Following: "any"
Insert: "portion of a"

9. Page 2, line 13.
Following: "(8)"
Insert: "(a)"
Strike: "If"
Insert: "Except as provided in subsection (8)(b), if"

10. Page 2, line 15.
Strike: "clear" through "any,"
Insert: "written finding"

11. Page 2, line 16 through line 19.
Strike: "If" on line 19 through "any." on line 19

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Following: line 19
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Strike: "An"
Insert: "Under this part, an"

14. Page 2, line 21.
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Insert: "required"
Strike: "the provisions of"

15. Page 2, line 29.
Following: "issue."
Insert: "The period of time between the request for a review by a board and completion of a review by a board under this subsection may not be included for the purposes of determining compliance with the time limits established for

SENATE NATURAL RESOURCES
EXHIBIT NO. 3 (PAGE 3 OF 4)
DATE 02/19/01
BILL NO. SB 317

environmental review in this section."

16. Page 2, line 30.
Strike: "may"
Insert: "shall"

17. Page 3, line 18.
Following: "means"
Insert: ", unless otherwise provided by law,"

18. Page 3, line 22.
Following: "past"
Insert: ","
Strike: "and"
Following: "present"
Insert: ", and future"

19. Page 3, line 30.
Following: "each"
Insert: "institutional"
Following: "trust"
Insert: "as described in The Enabling Act of congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 328)"

20. Page 4, line 2.
Strike: "or" through "review"

21. Page 4, line 9.
Following: "(b)"
Insert: "under this part,"

22. Page 6, line 13.
Following: "(a)"
Insert: "A challenge to an agency action under this part may only be brought against a final agency action."
Strike: "an"
Insert: "a final"

SENATE NATURAL RESOURCES
EXHIBIT NO. 3 PAGE 4 OF 4
DATE 02/19/01
BILL NO. SB 377

23. Page 6.
Following: line 24
Insert: "NEW SECTION. **Section 5. Applicability.** [This act] applies to environmental reviews that are begun after [the effective date of this act]."

- END -

1st motion — VOTE 1

MONTANA SENATE
2001 LEGISLATURE
NATURAL RESOURCES COMMITTEE
VOICE VOTE

DATE 02/17/01 BILL NO. SB 377 NUMBER ——

MOTION: Sen. Lorents Grosfield moved that AMENDMENTS TO SB 377 BE ADOPTED. Motion carried unanimously. Vote 10-0.

NAME	AYE	NO
SEN. WILLIAM (BILL) CRISMORE, CHAIRMAN	✓	
SEN. DALE MAHLUM, VICE CHAIRMAN (excused)		
SEN. VICKI COCCIARELLA	✓	
SEN. MACK COLE	✓	
SEN. LORENTS GROSFIELD	✓	
SEN. BEA MCCARTHY	✓	
SEN. KEN MILLER	✓	
SEN. GLENN ROUSH	✓	
SEN. BILL TASH	✓	
SEN. MIKE TAYLOR	✓	
SEN. KEN TOOLE	✓	

2nd Motion
Vote #3

MONTANA SENATE
2001 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 02/17/01 BILL NO. SB377 NUMBER —

MOTION: Sen. Bill Tash moved that SB377 DO PASS AS AMENDED.

Discussion: Sen Grosfield questioned language in the bill, ref page 2 line 30, where it stated an agency "may" proposed changing to an agency "shall". Mr. Kakuk felt that revision would not state any difference legally.

	NAME Additional discussion ensued (TAPE / side A + Side B)	AYE	NO
1	SEN. WILLIAM (BILL) CRISMORE, CHAIRMAN	✓	
11	SEN. DALE MAHLUM, VICE CHAIRMAN PROXY VOTE (excused)	✓	
5	SEN. VICKI COCCIARELLA		✓
4	SEN. MACK COLE	✓	
10	SEN. LORENTS GROSFIELD	✓	
8	SEN. BEA MCCARTHY		✓
9	SEN. KEN MILLER	✓	
3	SEN. GLENN ROUSH		✓
7	SEN. BILL TASH	✓	
2	SEN. MIKE TAYLOR	✓	
6	SEN. KEN TOOLE		✓

3rd motion - Vote #2

MONTANA SENATE
2001 LEGISLATURE
NATURAL RESOURCES COMMITTEE
VOICE VOTE

DATE 02/17/01 BILL NO. SB377 NUMBER

MOTION: Sen. Lorents Grosfield moved that SB377 BE AMENDED by changing the language on the bill on page 2, line 30, where it stated an agency "may" to an agency "shall". Motion carried unanimously. Vote 10-0.

NAME	AYE	NO
SEN. WILLIAM (BILL) CRISMORE, CHAIRMAN	✓	
SEN. DALE MAHLUM, VICE CHAIRMAN (excused)		
SEN. VICKI COCCIARELLA	✓	
SEN. MACK COLE	✓	
SEN. LORENTS GROSFIELD	✓	
SEN. BEA MCCARTHY	✓	
SEN. KEN MILLER	✓	
SEN. GLENN ROUSH	✓	
SEN. BILL TASH	✓	
SEN. MIKE TAYLOR	✓	
SEN. KEN TOOLE	✓	

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Natural Resources** report that **Senate Bill 377** (first reading copy - white) **do pass as amended.**

Signed: _____
Senator William Crismore, Chair

And, that such amendments read:

1. Title, line 5.
Following: "LIMITS"
Insert: "AND PROCEDURES"

2. Title, line 7.
Strike: "AND"

3. Title, line 8.
Following: "MCA"
Insert: "; AND PROVIDING AN APPLICABILITY DATE"

4. Page 1, line 12.
Following: "(1)"
Insert: "(a)"
Strike: "An"
Insert: "Except as provided in subsection (1)(b), an"

5. Page 1.
Following: line 13
Insert: " (b) To the extent that the requirements of this section are inconsistent with federal requirements, the requirements of this section do not apply to an environmental review that is being prepared jointly by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that must comply with the requirements of the National Environmental Policy Act."

Committee Vote:
Yes 7, No 4.

411318SC.srf

6. Page 1, line 27.
Strike: "shorter"
Insert: "other"
Strike: "otherwise"

7. Page 1, line 29.
Strike: "30"
Insert: "60"

8. Page 2, line 11.
Following: "any"
Insert: "portion of a"

9. Page 2, line 13.
Following: "(8)"
Insert: "(a)"
Strike: "If"
Insert: "Except as provided in subsection (8)(b), if"

10. Page 2, line 15.
Strike: "clear" through "any,"
Insert: "written finding"

11. Page 2, line 16 through line 19.
Strike: "If" on line 19 through "any." on line 19

12. Page 2.
Following: line 19
Insert: "(b) Subsection (8)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82, chapter 4, parts 1 and 2."

13. Page 2, line 20.
Strike: "An"
Insert: "Under this part, an"

14. Page 2, line 21.
Following: "review"
Insert: "required"
Strike: "the provisions of"

15. Page 2, line 29.

Following: "issue."
Insert: "The period of time between the request for a review by a board and completion of a review by a board under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in this section."

16. Page 2, line 30.
Strike: "may"
Insert: "shall"

17. Page 3, line 18.
Following: "means"
Insert: ", unless otherwise provided by law,"

18. Page 3, line 22.
Following: "past"
Insert: ","
Strike: "and"
Following: "present"
Insert: ", and future"

19. Page 3, line 30.
Following: "each"
Insert: "institutional"
Following: "trust"
Insert: "as described in The Enabling Act of congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 328)"

20. Page 4, line 2.
Strike: "or" through "review"

21. Page 4, line 9.
Following: "(b)"
Insert: "under this part,"

22. Page 6, line 13.
Following: "(a)"
Insert: "A challenge to an agency action under this part may only be brought against a final agency action."
Strike: "an"
Insert: "a final"

23. Page 6.
Following: line 24
Insert: "NEW SECTION. **Section 5. Applicability.** [This act] applies to environmental reviews that are begun after [the effective date of this act]."

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON NATURAL RESOURCES

Call to Order: By **VICE CHAIRMAN RICK DALE**, on March 19, 2001 at 3:00 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Rick Dale, Vice Chairman (R)
Rep. Gail Gutsche, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Dee Brown (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Larry Cyr (D)
Rep. Ron Erickson (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Rick Laible (R)
Rep. Jeff Laszloffy (R)
Rep. Douglas Mood (R)
Rep. Bob Story (R)
Rep. Brett Tramelli (D)
Rep. David Wanzenried (D)

Members Excused: Rep. Cindy Younkin, Chairman (R)
Rep. Rod Bitney (R)

Members Absent: Rep. Bill Eggers (D)
Rep. Christopher Harris (D)

Staff Present: Holly Jordan, Committee Secretary
Larry Mitchell, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 377, 3/13/2001; SB 408, 3/13/2001
Executive Action: SB 408

{Tape : 1; Side : A; Approx. Time Counter : 8.8}

SEN. MCCARTHY stated she will look at an amendment to address **REP. STORY's** concerns. She asked for a do concur.

HEARING ON SB 377

Sponsor: **SEN. DUANE GRIMES, SD 20, Clancy**

Proponents: Ed Regan, RY Timber Corporation
Paul Buckley, Butte, self
Al Kington, Montana Forest County Coalition
Rick Jordan, Butte, self
Tammy Johnson, League of Rural Voters
Todd O'Hair, Governor's Office
Julie Martin, Townsend, self
John Youngberg, Montana Farm Bureau
Cary Hegreberg, Montana Wood Products Association
Frank Crowley, ASARCO
Don Allen, WETA
Dexter Busby, MRC & MPA
Peggy Trenk, Montana Association of Realtors
Martin L. Johnson, Whitehall, self
Pachy Burhs, Big Timber, self
Marjory Plummer, Billings, self
Karen Zost, Billings, self
Patsy Glaser, Huntley, self
Marie Hanland, Dupuyer, self
Margie Thompson, Wolf Creek, self
Ellen Allen, Custer, Rocket Creek Ranch
Jim Mockler, Montana Coal Council
Gail Abercrombie, Montana Petroleum Association
John Bloomquist, Montana Stock Growers Association
Angela Janacaro, Montana Mining Association
Barry "Spook" Stang, MMCA
Charles Brooks, Billings Chamber
Bob Williams, Hobson, self
Patrick Heffernan, Montana Logging Association
Michael S. Kakuk, Montana Contractors Association
Margaret Morgan, Montana Petroleum Marketers

Opponents: Jeff Barber, MWF
Anne Hedges, MEIC
Greg Tollefson, Missoula, self
John Wilson, Trout Unlimited
Richard Parks, NPRC

Janet Ellis, Montana Audubon
Bob Stevens, Helena, self
Steve Gilbert, Helena, self
George Nell, Gardiner, self
Candace Durran, Helena, self
Jim Sweany, Gardiner, self

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 12.6}

SEN. DUANE GRIMES, SD 20, Clancy, submitted written testimony after the hearing **EXHIBIT(nah62a01)**. He talked about the extreme environmentalist views. MEPA was never intended to be such an obstruction but a method of cautious, careful consideration. SB 377 sets sideboards on MEPA, the permitting process. The time lines in MEPA are intended to allow for the careful review under procedural standpoints. He went over the time lines. Under current MEPA law, if the agency has a sound reason to believe that the project would not meet Montana's strong environmental laws, none of which are being changed by SB 377, the agency could still withhold the permit. This bill directs the agencies to make a professional decision in a timely manner. It puts sideboards on MEPA so that when the sponsors propose a project they will know when they are going to hear the outcome. This could cause the agencies to decline a project rather than taking a great deal of time reviewing the project. At least then the sponsors will know. He went over the definitions in the bill. This bill reflects what MEPA intended to do all along.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 22.6}

Ed Regan, RY Timber Corporation, stated that RY supports SB 377 for the following reasons: The bill includes well defined time lines along with important definitions of several previously undefined terms. These changes should improve MEPA and streamline the process. Most importantly is the 30 day time limit placed on legal challenges. No longer will project opponents be able to file lawsuits at the 11th hour. He talked about a lawsuit against RY Timber. MEPA does not have to be an impediment to economic activity in the state. The passage of SB 377 will keep Montanans working.

Paul Buckley, Butte, self, submitted written testimony **EXHIBIT(nah62a02)**.

Al Kington, Montana Forest County Coalition, stated, the coalition is supporting all the changes to MEPA. There needs to be a timely resolution for the infrastructure of a new company. He urged a do concur.

Rick Jordan, Butte, self, submitted written testimony **EXHIBIT(nah62a03)**.

Tammy Johnson, League of Rural Voters, stated, it is hard to believe there is so much contention over this bill. There are time lines for everything we do in life. We should not expect that the state agencies in the permitting process can be the exception to that rule. MEPA is a look before you leap law, it is an information gathering law and it is a public participation process. She urged a do concur of SB 377. She submitted a packet of petitions **EXHIBIT(nah62a04)**.

Todd O'Hair, Governor's Office, stated that Governor Martz supports SB 377 and urges the committee to send it to her desk for signature.

Julie Martin, Townsend, self, submitted written testimony **EXHIBIT(nah62a05)**.

John Youngberg, Montana Farm Bureau, stated, this bill sets out some definitive time frames. He went over the bill. He stated that he was asked by **John Bloomquist, Montana Stock Growers Association**, to show his support.

Cary Hegreberg, Montana Wood Products Association stated the prospects of finding a job in Montana are dismal. We would like to have our kids stay and work in Montana but many of them can't. SB 377 is a good bill because it assures accountability within the state agencies that are responsible for granting permits. The bill forces agencies to make a decision. He gave some examples of where MEPA time lines hurt industry. This is not an issue that just affects mining and timber, it affects a lot of people who are trying to make a living in Montana. He urged a do concur.

Frank Crowley, ASARCO, submitted written testimony **EXHIBIT(nah62a06)**.

Don Allen, WETA, stated that SB 377 is part of an important package of bills that WETA worked on for several months. He asked for a do concur.

Dexter Busby, MRC & MPA, urged a do concur of SB 377.

Peggy Trenk, Montana Association of Realtors, urged a do concur of SB 377. Aidan Myhre from the Montana Chamber of Commerce also supports the bill. MEPA applies to major subdivisions although an EIS is very rarely required. The Realtors couldn't afford extended time lines and costs that are associated with other projects.

Patrick Heffernan, Montana Logging Association, stated that he would concur with **Mr. Regan's** and **Mr. Hegreberg's** remarks. This is a proactive step to prevent delays in the future. He urged a do concur.

Opponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 54.2}

Jeff Barber, MWF, stated, from 1989 until 1998 Montana agencies did 17,376 MEPA reviews and only one was denied. This bill does nothing to change litigation. It raises more questions that will probably result in more litigation. He discussed the time frames. He went over the Fiscal Note. He urged the committee to table the bill.

Anne Hedges, MEIC, stated, what about updating and modernizing the 1872 mining law? The language on page 3, line 17 concerns her. "May only" is exclusive, the language should read "must also" as it is inclusive. ***{Tape : 1; Side : B; Approx. Time Counter : 0.1}*** The cumulative language should be consolidated into one place. This is going to create more lawsuits because citizens are going to be forced to sue when they feel that an agency hasn't looked at the potential cumulative impacts of a project. It will also create a lack of a proper analysis and a lack of time to bring suit. It is the citizens' right to a clean and healthful environment. SB 377 is confusing. One example is when you have timber sales going through the MEPA process in significant advance of the Land Board making a decision on that timber sale 60 days doesn't make any sense. She gave some examples that the bill won't affect. She urged the committee to oppose the bill.

Greg Tollefson, Missoula, self, submitted written testimony **EXHIBIT(nah62a07)**.

John Wilson, Trout Unlimited, stated, page 4, lines 15 - 18, of the bill, talks about project sponsors. Regarding state trust

lands, what is an institutional beneficiary? They are each and every one of the school districts in the state, etc. He compared SB 377 to HB 459. Any requested reviews would be paid by the taxpayers. This bill makes MEPA more expensive. The intent of the bill is to speed the process but it actually slows the process down. He asked the committee to give consideration to striking the project sponsor language.

Richard Parks, NPRC, submitted written testimony **EXHIBIT(nah62a08)**.

Janet Ellis, Montana Audubon, stated, with the passage of this bill which has four appeal processes to MEPA, HB 459, HB 473 and SB 408, there are going to be seven additional appeal processes in MEPA and the efficiency is going to grind to a halt. She urged a do not concur.

Bob Stevens, Helena, self, submitted written testimony **EXHIBIT(nah62a09)**. He read that testimony which was determined, by **REP. DALE**, not to be related to the bill. **REP. DALE** ruled **Mr. Stevens** out of order.

Steve Gilbert, Helena, self, submitted written testimony **EXHIBIT(nah62a10)**.

George Nell, Gardiner, self, stated that he is opposed to any streamlining of the MEPA law. We need to protect the environment.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 22.9}

REP. MOOD asked **Mr. Barber** who pays for the EIS? **Mr. Barber** stated, the project sponsor does. **REP. MOOD** asked, then a delay in inadequate data would be a delay to the project sponsor correct? **Mr. Barber** stated he is not sure what delays will be allowed with this bill. **REP. MOOD** asked, would you agree that it is in the best interest of the project sponsor to provide the necessary information to expedite the EIS? **Mr. Barber** stated he would hope so. **REP. MOOD** asked **Mr. Barber** to go through the scenario where defining the MEPA as procedural rather than substantive affects that situation. **Mr. Barber** compared SB 377 to HB 473. The one bargaining chip the agencies currently have on extending time frames is that if the time frame is not extended the permit will be denied. Therefore, you have to agree to the extension or you will be denied. That chip may be taken

away with HB 473. **REP. MOOD** asked, do you think that will be done based on the fact that the laws would be defined as procedural rather than substantive? **Mr. Barber** stated, yes.

REP. STORY asked **SEN. GRIMES**, regarding page 7 of the bill, line 3 - 4, there is some question regarding timber sales, what is the final action in that? **SEN. GRIMES** stated, the intention is not to prevent somebody an opportunity once the agency has made a decision. The way the wording currently reads suggests that a challenge could be made in either case. He suggested **REP. STORY** redirect the question to the Wood Products Association. **REP. STORY** asked, would it be your preference have the 60 days start upon the completion of the EIS or when the Land Board Makes a sale? **SEN. GRIMES** stated, if the agency has made a final determination and there are no more things to consider in the EIS then that would be the preferable time for that time frame to begin to kick in.

REP. STORY asked **Mr. Crowley**, regarding page 7 of the bill, lines 3 - 4, can legal action only be brought on procedural issues? **Mr. Crowley** stated, he believes that is correct. **REP. STORY** asked, regarding the wording on line 6, what do you do if there are two challenges at once? **Mr. Crowley** stated, that is unlikely. The way most administrative boards would probably handle that would be to schedule the hearings at the same hearing. The notice may say the hearing on the issue is to be held at 9:00a.m. or sometime thereafter. The language is suggesting that MEPA hearings will take precedence over any other hearings. **REP. STORY** asked can the legislature tell the District Court how to schedule the cases? **Mr. Crowley** stated these kinds of provisions are not frequent but they do occur in law.

REP. ERICKSON asked **Mr. Crowley** regarding page 7, line 10, what does the language "unless otherwise provided by law" mean? **Mr. Crowley** gave an example on writs.

REP. ERICKSON asked **SEN. GRIMES**, have you considered the concern by **Mr. Wilson** about the potential of having 400 school district project sponsors? Why is that in the bill? **SEN. GRIMES** stated the project sponsor can appear to provide notice. This just gives them a say in the action on the School Trust Lands that affects their funding. **REP. ERICKSON** asked, why are they project sponsors? It seems that a project sponsor would be the company that wants to do the action. **SEN. GRIMES** stated, the language specifically includes any beneficiary of the trust to provide them with the opportunity to appear before the board or the agency in order to address problems. **REP. ERICKSON** asked **SEN.**

GRIMES to comment regarding cumulative impacts and the fact that there seems to be a part of the definition in two different places. Particularly on page 3, line 17, it seems that would belong in the definition area. Would that be a friendly amendment? **SEN. GRIMES** stated, if this language was not in this section of the bill it wouldn't be defined anywhere. It talks about how cumulative impacts will be used. That is not too dissimilar to what is done in other bills. It seeks to define it because it is being used. That is why it is in the two sections. **REP. ERICKSON** asked, why shouldn't the language "must also" instead of "may only" be used? **SEN. GRIMES** stated then you have undermined the entire purpose of the bill. We just want to make sure that the uses for that land that are being concerned are the ones that will be considered in the cumulative impact, not hypothetical things that may never come to occur. **REP. ERICKSON** asked, for example lets say the action being considered is a new logging operation and another logging operation has been granted in a neighboring area, does this language allow cumulative impacts to talk about something that has been approved but has not yet happened? **SEN. GRIMES** stated absolutely. If it is just an idea then it would not. If it is something that has been considered and approved that's a concurrent action. If it's already been approved then it would be addressed in the EIS process. **REP. ERICKSON** asked, regarding complete applications, in HB 147 there is a strong definition of what a complete application is. The language in SB 377 is not as strong at that language in HB 147. Would you be willing to use the kind of language in HB 147 regarding what a complete application is? **SEN. GRIMES** stated, complete application is defined on page 4, lines 4 - 6. He stated that he is not familiar with HB 147 but believes the language is coordinated with SB 377. **REP. ERICKSON** stated that the committee should look at the language in the two bills.

REP. GUTSCHE asked **SEN. GRIMES**, regarding the application process, can you imagine a time when an application would be complete but wouldn't contain everything that is needed to make a sound judgement? **SEN. GRIMES** stated, if it is not complete then the time lines don't begin. It would be up to the agency to make that decision. **REP. GUTSCHE** asked, according to the definition it could contain all of the data, studies, etc., but maybe the data is inaccurate or maybe there is data not included, etc. **SEN. GRIMES** stated, all the data that is being talked about is what is required by the department and other substantive law. He gave an example regarding water quality monitoring. **REP. DALE** stated, the permit application is submitted, the department reviews it and if the agency determines that a permit application

is not complete they issue deficiency letters. That loop can occur several times until the department is sure that they have addressed the completeness requirements of an application. Where there is an acceptability standard they will let that process go and work the deficiency route until it gets to acceptability. **REP. GUTSCHE** asked **SEN. GRIMES** if he would consider it a friendly amendment to use the wording from HB 147. **SEN. GRIMES** stated that there would have to be some coordination between the bills because they are in the same section of law.

REP. LAIBLE asked **SEN. GRIMES**, regarding page 4, lines 15 - 17, the way it is written seems to say that anything that includes a School Trust Land could include the inclusion of any other beneficiary of the School Trust Land. He gave an example. **SEN. GRIMES** stated, then you are saying someone in southwestern Montana may take exception to something done in northeastern Montana. **REP. LAIBLE** stated, or could. **SEN. GRIMES** stated the concern on the Senate side was that this be not so broad as to include any individual. He would have to take a look at who would actually be the beneficiary. The way it is written it could be any beneficiary. Lines 17 - 18 were added by amendment and some technical explanation may be needed. **REP. LAIBLE** stated, as he reads this you could get about 8.5 months without the approval of the sponsor just by the actions of the agency. **SEN. GRIMES** stated, then you are saying these time frames can be extended 50% and then by mutual agreement may be extended further than that. That assumption is correct.

REP. MOOD asked **Mr. Hegreberg**, under current law can individual school districts intervene in projects that are taking place on School Trust Land. **Mr. Hegreberg** stated individual school districts do have standing in court in the management of School Trust Lands. **REP. MOOD** asked, are you familiar with the language on page 5, lines 16 - 17? **Mr. Hegreberg** stated yes. **REP. MOOD** asked, does that language in any way change that? **Mr. Hegreberg** stated, it is important to understand when activities are proposed on State Trust Lands there is a beneficiary for each tract of land. In some cases that beneficiary is the common schools which is the K - 12 public education system. About 2/3 of the trust land in Montana is common School Trust Land. Every school district is a beneficiary of those common school lands. The funds from those lands go into the OPI and are distributed to each school district based on the equalization formula the state uses. In other cases those areas are specific institutions and one could allege that if a project is proposed on their land they are the project sponsor. An agency of state government is administering those lands on behalf of the beneficiary but a

project proposed on land that is designated to that beneficiary thereby makes them, in essence, a project sponsor.

REP. GUTSCHE asked **Ms. Hedges** to respond to **REP. MOOD's** round of questioning. **Ms. Hedges** stated, there were technical inaccuracies in what **Mr. Hegreberg** said but the essence of what he said is true. Every person in the state is a beneficiary of the trust.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 62.2}

SEN. GRIMES closed. The testimony that was submitted as **Exhibit(1)** addressed the issues which he spoke of in his closing. *{Tape : 2; Side : A; Approx. Time Counter : 0.1}* He urged a do concur.

EXECUTIVE ACTION ON SB 408

{Tape : 2; Side : A; Approx. Time Counter : 4.5}

Motion: **REP. ERICKSON** moved that **SB 408 BE CONCURRED IN.**

Discussion:

REP. HOLDEN asked, isn't there a place where **REP. STORY** stated an amendment may be needed? He is not here now.

Mr. Mitchell explained the possible amendment.

REP. LAIBLE stated that he saw **REP. STORY's** concern in a different way. He asked the committee to hold off on executive action until **REP. STORY** can be there.

REP. YOUNKIN stated that executive action will be put off to give **REP. STORY** the opportunity to talk to **Mr. Mitchell** about the amendment.

SB 377
SB 408

HOUSE OF REPRESENTATIVES

ROLL CALL

NATURAL RESOURCES

DATE March 19, 2001

NAME	PRESENT	ABSENT	EXCUSED
CINDY YOUNKIN			✓
RICK DALE	✓		
GAIL GUTSCHE	✓		
GILDA CLANCY	✓		
LARRY CYR	✓		
KEITH BALES	✓		
BILL EGGERS		✓	
LINDA HOLDEN	✓		
BRETT TRAMELLI	✓		
RICK LAIBLE	✓		
DOUGLAS MOOD	✓		
DAVID WANZENRIED	✓ 1/2		
JEFF LASZLOFFY	✓		
RON ERICKSON	✓		
AUBYN A. CURTISS	✓		
CHRISTOPHER HARRIS		✓	
ROD BITNEY			✓
DEE BROWN	✓		
JOAN HURDLE	✓		
BOB STORY	✓		
LARRY MITCHELL	✓		
HOLLY JORDAN	✓		

MONTANA HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE
VISITORS REGISTER

DATE March 19, 2001

BILL NO. SB 377 SPONSOR(S) Sen. Grimes

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
✓ P O I	Tammy Johnson	Whitehall	Ig of Rural Voters
✓ P O I	Martin L Johnson	Whitehall	Self
✓ P O I	PACHY RUEHS	BIG TIMBER	SELF
✓ P O I	Marjory Blumenthal	Billings	Self
✓ P O I	Karen Jost	Billings	self
✓ P O I	Patsy Rosen	Huntley	self
✓ P O I	Maria Vanland	Dayton	self
✓ P O I	Margie Thompson	Hay Creek	self
✓ P O I	Ellen Allen	Condon	Rocky Creek Ranch
✓ P O I	Greg Tollefson	Missoula	self
✓ P O I	Dexter Bailey	Great Falls	MKC - MPA
✓ P O I	Cary Hegstrom	Helena	Wood Prod. Asso.
✓ P O I	Candace Durran	Helena	self
✓ P O I	[illegible]	Gardiner	self

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

✓ O	Jeff Barber	Helena	MWF
✓ P	Don Allen	Helena	WETA

MONTANA HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE
VISITORS REGISTER

DATE March 19 2001

BILL NO SB377 SPONSOR(S) Grimes

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P O I	Ed Regan	P.O. Box 220 Townsend MT	Ry Timber
P O I	Jim Mockler	Helena	MT Wool Council
P O I	Richard Parks	PO Box 193 Gardiner MT 59030	NPRC
P O I	Julie Moore	PO Box 1073 Townsend	Bailey
P O I	Paul Buckley	3006 Mammoth Butte, MT.	Self
P O I	Steve Gilbert	721 2nd St Helena	Self
P O I	Rick Jordan	2425 Harvard Butte	Self
P O I	Gail Abercrombie	Helena	MT Petroleum Assn
P O I	Peggy Trenk	Helena	MT. Assoc. of Realtors
P O I	Frank Crowley	Helena	ASARCO
P O I	Al Kingston	Helena	Mt. For. Co. Coal.
P O I	Bob Stevens	Helena	self
P O I	George Nell	P.O Box 743, Gardiner	Self
P O I	John Blamquist	Helena	MT Stockgrowers

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

MONTANA HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE
VISITORS REGISTER

DATE March 19, 2001

BILL NO. SB 327 SPONSOR(S) Grimes

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

	PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
✓	P O I	John Wilson	Helena, MT	MT Trout Unlimited
✓	P O I	Angela Janaccaro	Townsend	MMA
✓	P O I	Barry "Spook" Stang	Helena	MMCA
✓	P O I	Charles Brooks	Billings	Bkg. C Hrm Bur
✓	P O I	[illegible]	Helena	self
✓	P O I	Janet Ellis	Helena	MT Audubon
✓	P O I	PATRICK HAFFERNAN	KALISPELL	MT LOGGING ASSOC.
✓	P O I	MICHAEL S. KAKUK	HELENA	MT. CONTRACTORS ASS'N
✓	P O I	John Youngberg	Helena	MT Farm Bureau
✓	P O I	Anne Hedges	Helena	MFTC
✓	P O I	MARGARET MORGAN	~~HELENA~~	MONTANA PETROLEUM MARKETERS
	P O I			
	P O I			
	P O I			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

Montana State Senate

EXHIBIT 1
DATE 3-19-01
SB 377

SENATOR DUANE GRIMES
SENATE DISTRICT 20

HELENA ADDRESS:
PO BOX 200500
HELENA, MONTANA 59620-0500
PHONE: (406) 444-4800

HOME ADDRESS:
#4 HOLE IN THE WALL
CLANCY, MONTANA 59634
PHONE: (406) 933-8538

The Big Sky Country

COMMITTEES:
JUDICIARY, VICE CHAIRMAN
LOCAL GOVERNMENT
PUBLIC HEALTH, WELFARE & SAFETY, VICE CHAIRMAN
LEGISLATIVE ADMINISTRATION, CHAIRMAN

March 23, 2001

Representative Cindy Younkin, Chair
House Natural Resources Committee
Montana State Legislature

Dear Rep. Younkin:

Thank you and your committee for a good hearing on SB 377. I'd like to take this opportunity to better explain my position on some of the testimony and questions regarding some important points in the bill.

CUMULATIVE IMPACTS

- Definition Issue:

  Opponents to the bill expressed concern regarding the location and wording of the "cumulative impacts" requirement. SB 377 states the following

  ~~(12)~~(11) An agency ~~may~~ SHALL, when appropriate, consider the cumulative impacts of a proposed project. However, related future actions may only be considered when these actions are under concurrent consideration by any agency through preimpact statement studies, separate impact statement evaluations, or permit processing procedures

  Page 3, lines 6 through 19.

  SB 377 also defines cumulative impacts as follows:

  (3) "Cumulative impacts" means the collective impacts on the human environment of the proposed action when considered in conjunction with other past, ~~and~~ present, AND FUTURE actions related to the proposed action by location or generic type.

  Page 4, lines 7 through 9.

Opponent testimony made much of the fact that SB 377 takes the current cumulative impacts definition from the state agency model MEPA rules - but puts the two sentences from the rule in two separate locations in the bill. This is true - and it is appropriate as it stands.

The definition of cumulative impacts in SB 377 stands on its own. "Cumulative impacts" means what it says it means. The language contained in the substantive portion of SB 377, in other words, the language that actually requires the agency to conduct a cumulative impact analysis, also contains language that clarifies when future related actions may be considered. This clarification of how the substantive requirement is applied does not belong in the definition but should remain where it is. I object to any amendment that changes the location of this language.

- "May Only" Issue:

Additionally, bill opponents expressed concerns regarding a change from the model MEPA rules. Again, SB 377 states:

~~(12)~~(11) An agency ~~may~~ SHALL, when appropriate, consider the cumulative impacts of a proposed project. However, related future actions **may only** *be considered when these actions are under concurrent consideration by any agency through preimpact statement studies, separate impact statement evaluations, or permit processing procedures.*

Page 3, lines 16 through 19.

Where SB 377 states "may only" the model rules state "must also". This is an important change and it also is appropriate. This change will prevent an agency from considering merely speculative impacts when permitting an activity.

For example, Discharger A makes an application to the DEQ for a water quality discharge permit. Also on that same stream is Discharger B who already has a discharge permit. Discharger B has discussed expanding its operation, which, if the expansion occurred, would lead to an increased discharge. Under SB 377 the DEQ could not consider the speculative impacts from an increase in discharge from Discharger B unless Discharger B's expansion was "*under concurrent consideration by any agency through preimpact statement studies, separate impact statement evaluations, or permit processing procedures.*"

It should be obvious that any current existing impacts, or any impacts that have been studied and previously approved even if it not yet implemented, should be included in a cumulative impacts analysis. However, SB 377's outright prohibition on considering merely speculative impacts is appropriate and I object to any amendments that alter the intent of SB 377 on this issue.

COMPLETE APPLICATION

The Committee heard opposition testimony that SB 377's definition of "complete application" is inadequate. SB 377 defines "Complete Application" as follows:

> *(2) "Complete application" means, UNLESS OTHERWISE PROVIDED BY LAW, an application for a permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures required to be included with the application by the applicable statutes and rules.*
>
> Page 4, lines 4 through 6.

Opponents to the bill stated that this definition was in conflict with new language in the coal statutes regarding a coal mining application's completeness and adequacy. First, if there is a conflict, then the specific language in the coal statutes prevails over that in SB 377. SB 377 clearly states that "complete application" is defined as in SB 377 unless otherwise provided by law. Therefore, there is no conflict with the coal statutes or any substantive law.

Secondly, opponents to the bill proposed a conceptual amendment that would take "completeness" language similar to that in the coal statutes and place it into SB 377. I strongly object to this proposed amendment.

The new coal statute language was changed through the legislative process and I'm sure that the new language in the coal statute is appropriate for the coal permitting program. However, I seriously doubt that the new coal program language would be appropriate for every permit in every regulatory program across all state agencies.

If a particular regulatory program needs a tighter definition of "complete application" the agency, regulated community, or the public, has the right to approach the legislature and present its case. That new language will then control the "completeness" determination for that program.

INSTITUTIONAL BENEFICIARIES

SB 377 defines "Project Sponsor" to include:

> *If the action involves state trust lands, the term also includes each INSTITUTIONAL beneficiary of any trust AS DESCRIBED IN THE ENABLING ACT OF CONGRESS (APPROVED FEBRUARY 22, 1899, 25 STAT. 676), AS AMENDED, THE MORRILL ACT OF 1862 (7 U.S.C. 301 THROUGH 308), AND THE MORRILL ACT OF 1890 (7 U.S.C. 321 THROUGH 328).*

The committee heard testimony from opponents of the bill that this language was unworkable, would create "log jams" during the MEPA process, and specifically would require the DNRC to get the approval of all school districts in Montana before a timber sale could go forward. None of these creative horror stories are true.

Put simply, what including institutional beneficiaries in the definition of "project sponsor" does is to give the institutional beneficiaries, including school districts, a stronger voice in the MEPA review process. SB 377 does not in any way change the management or decision making authority of the State Land Board or increase the substantive authority or responsibility of trust beneficiaries.

I assume that opponents of SB 377 hope that removing this part of the definition will better prevent the (apparently) unwanted involvement of local school districts in timber sale decisions.

Projects proposed on state lands are, in essence, projects proposed on lands that belong to beneficiaries of the trust. It is appropriate that these beneficiaries have a stronger voice during the MEPA review process for projects that impact their land. I oppose any amendment that attempts to remove this important language.

FINAL AGENCY ACTION

Opponents to the bill questioned exactly what is meant by the phrase "final agency action". Specifically, they questioned whether in a timber sale the final agency action was the completion of the environmental review by the DNRC or the actual decision to approve the timber sale by the State Land Board. The intent of SB 377 is to allow a challenge to a final agency decision that actually implements the environmental review. For example, if the State Land Board is the body that makes the decision to approve, increase, decrease, or cancel the timber harvest recommended in the DNRC's environmental review, the final agency action subject to challenge under MEPA would be the Land Board's decision.

Additionally, I am proposing an amendment that will make it clear that any challenge to a MEPA decision must be made in district court and not to an administrative board. My understanding from state agency attorneys is that this is the current view of state agencies but that it should be clarified.

CONCLUSION

Again, thank you for a good hearing and I urge the committee to pass SB 377 out to the full House for debate on 2nd reading.

Sincerely,

Sen. Duane Grimes

EXHIBIT 2
DATE 3-19-01
SB 377

TESTIMONY SUPPORTING

Senator Duane Grimes SENATE BILL 377

PAUL BUCKLEY

3006 MAMMOTH DR.

BUTTE, MT 59701

Mr. Chairman, Members of the Committee, Senator Grimes. My name is Paul Buckley. I live in Butte and am employed by Golden Sunlight Mines.

It is my observation that current regulatory requirements imposed on industry in Montana have more to do with the legal interpretation of laws and statutes and less with actual environmental impacts. This has resulted in increase costs and delays for businesses with no benefit to the environment. However, it has had a very negative impact on the income and economic well being of the citizens of Montana.

I would like to give you an example. My employer, Golden Sunlight Mines, paid 17.7 million dollars in wages and benefits last year, mine included. In fact, since the mine opened in 1982 they have paid more than 205 million dollars in wages and benefits.

That's 205 million dollars that individuals paid taxes on, spent in our restaurants, purchased new cars and trucks with, bought their children's school cloths with, paid the mortgage payment with, spent on vacation, and money that paid the college tuition.

In the decade of the 90's, the mine spent nearly 270 million dollars buying goods and services. Again, those businesses paid employees who paid their taxes, bought the ticket for the show, purchased a new appliance, bought the hunting and fishing license, bought the Christmas presents and added a deck on the back of the house.

Last year alone, Golden Sunlight paid $875,000 dollars in taxes to the county and overall Golden Sunlight has paid 15 million dollars in production taxes. Those taxes paid the salaries of the sheriff deputies who paid their taxes. That money paid for the clerk in our district court who hired the babysitter who both paid their taxes, funded our schools who paid the teachers who paid their taxes, paid the man to run the road grader who paid his taxes and on and on.

Well, the economy of Montana is falling down and that necessary sequence of our economy is breaking up. Montana Resources employees are out of work. So are American Timber workers, the Asarco smelter workers, the Columbia Falls Aluminum workers, Diamond Hill Mine workers and there are less workers at places like Stone Container, Owens and Hurst, and soon workers will be losing their jobs at Pyramid Mountain Lumber and Golden Sunlight Mines.

The issue is not to change the environmental standards in Montana, but rather to make administration of those standards efficient and timely so that resource based industries can continue to provide well paid jobs for the citizens of Montana. Jobs that are essential for development of an improving economy in Montana.

We have got to rebuild Montana. This will help. Please support this bill.

Thank you,

Paul Buckley
3006 Mammoth Dr.
Butte, MT 59701

EXHIBIT 3
DATE 3-19-01
SB 377

TESTIMONY SUPPORTING

SENATOR GRIMES SENATE BILL 377

RICK S. JORDAN

2425 HARVARD

BUTTE, MT 59701

Mr. Chairman, Members of the Committee, Senator Grimes

My name is Rick Jordan and I am Mill Superintendent at the Golden Sunlight Mine. I strongly support Senate Bill 377. The Montana Environmental Policy Act (MEPA) was designed to create balance between industry and the environment. However, MEPA can also be used as a tool by special interest groups to thwart any and all natural resource-related projects. This bill will clarify MEPA's original intent.

Our regulatory agencies are made up of extremely capable scientists and engineers trained to study facts and data necessary in determining potential detrimental effects of proposed projects. Unfortunately, the permitting process has become so difficult and drawn out that obtaining an operating permit can take decades. This is illustrated by the following example:

Golden Sunlight was granted an operating permit for expansion after completing an environmental assessment (EA) in 1992. Several environmental organizations immediately challenged the permit by suing State regulatory agencies and Golden Sunlight. Even though regulatory agency personnel agreed with the Golden Sunlight operating plan and were satisfied with data presented in the EA, a Montana judge ruled that an environmental impact study (EIS) must be completed before a permit could be legally granted. The operating permit delay necessitated modifying Golden Sunlight's waste hauling schedule, thus increasing operating costs by over $1,200,000.

A draft EIS was published in November 1997 and the final document was completed in April 1998. During the public comment period, 289 written and oral comments were received in favor of the Golden Sunlight operating plan. Additional support included a petition containing 1,340 signatures. Only three opposing comments were received. The permit was not granted, however, until July 1998 as regulatory agencies took extra time in studying the document to make sure that there were not grounds for additional law suits. None-the-less, within 90 days the environmental organizations filed to continue the law suit.

Opponents of legislation designed to clarify MEPA argue that "only" 27 lawsuits have been filed since MEPA was enacted in 1971. The Golden Sunlight lawsuit is just one of those 27 lawsuits and has been ongoing since 1992.

Today's investor market is extremely competitive and investors expect a timely return on their investments. Montana's legacy of lengthy permitting studies does not encourage new business development by those industries that traditionally pay high salaries and offer decent benefit packages.

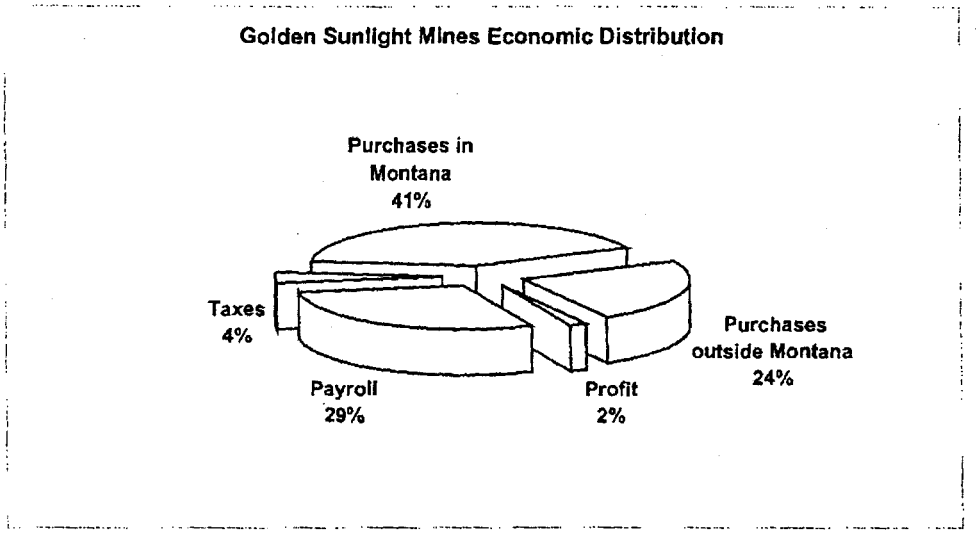
Should the permitting process, then, be only a token exercise with permits granted to all applicants? Certainly not. If MEPA is used as intended by it's authors, only those projects deemed suitable by Montana's regulatory agencies will be permitted. Laws already in place will guarantee environmental protection. Operators unwilling or unable to abide by those laws must be punished just as any other law breaker is punished.

Responsible operators will strive to use the latest and most effective feasible technologies to ensure the greatest means of environmental protection. As an example, in 1998, Golden Sunlight installed a cyanide destruction circuit requiring a capital outlay in excess of $2,400,000 and annual operating costs in the range of $595,000. This installation was not mandated by any State regulation. However, Golden Sunlight chose to install the circuit because the technology was proven effective and provided yet another means of guarding against adverse environmental impact.

Finally, I would like to comment on a statement included in a recent guest editorial written by one of Butte's representatives and published in the Montana Standard. This statement represents a common argument in the fight against the extractive industries. The representative wrote, "*Throughout Montana's first century, our Legislature sat back while the large, extractive industries exploited our natural resources. Most of the money left the state, while Montana citizens remained behind to pick up the pieces.*"

Although I question the fact that most of the money left the state, I do not have data to disprove that claim. I do, however, have economic data from the Golden Sunlight Mine. Golden Sunlight began operating in 1983. Since that time, Golden Sunlight has purchased $270,299,877 in goods and services from Montana suppliers and $154,446,899

in goods and services from suppliers outside of Montana[1]. Golden Sunlight has paid its employees a total of $192,635,231 in wages and benefits. Suppliers and employees pay taxes. Golden Sunlight has paid taxes totaling $25,068,219. Yet profit realized by Placer Dome, Golden Sunlight's parent company, has totaled only $10,945,000 since 1983. In other words, the Golden Sunlight has given the government 2.3 times what it has returned to the parent company. Economic distribution is presented graphically below.



The Butte representative failed to mention the countless number of doctors, lawyers, engineers, school teachers, or other professional people who received their education with mining dollars. He also did not discuss the hundreds of thousands of meals put on the tables of miners and their families. He did not credit Montana's mining industry with helping to develop the greatest industrial power that this world has ever known. And finally, he made no reference to the fact that Montana's mines provided many of the natural resources needed to defeat axis powers during two World Wars.

We live in the most pampered society in history. So pampered, in fact, that we place higher priority on our recreation than on ensuring that our children have the opportunity to hold decent jobs and live in the state of their choice.

Montanans want higher paying jobs. Those jobs come from industry. However, industry is convinced that Montana is closed to business. Senate Bill 377 is a step toward changing that attitude.

Rick S. Jordan
2425 Harvard
Butte, MT 59701

[1] Data pertaining to money paid for goods and services prior to and including 1990 was unavailable. Thus, average annual outlays for those years were calculated as a function of payroll costs.

Exhibit: 4
3.19.01
SB- 377

KEEP MONTANA WORKING.
FOR OUR FAMILIES AND OUR ENVIRONMENT

SB 377

It is now 2001. The well-intended laws we passed to provide a productive and enjoyable harmony between humans and their environment are showing their age. Montana families pay the price of this aging in family wages (from near the top in our nation in the 1960's to near the bottom in 2000), our ability to fund quality schools, tax-base erosion and a litany of social ills that correspond to a culture in crisis.

It is time that these laws be refined and modernized to meet the challenges of today. The current efforts of our legislators reflect their commitment to maintain environmental *standards* while improving the *processes* by which we meet these standards. These modernizations proposed by our legislators are not for 'business' – they are for the families that need businesses to quit choosing other places on the planet to locate their enterprises. These modernizations will help us step toward a future when we can make a family wage in the places we call home without compromising our environment to do so.

Specifically:

Modernization of the Montana Environmental Policy Act (MEPA):
The timely and necessary environmental movement that blossomed in the 1960's helped us, as a society, formulate some major, visionary laws designed to care for the planet we share. MEPA was to be a process by which we evaluated environmental impacts while providing food, clothing, shelter and energy for our human needs. MEPA is now too often abused by the environmental conflict industry as a tool to hinder, delay or stop environmentally sound projects that they don't 'like.' It is time that MEPA is refined and modernized to meet the challenges of today.

I support the passage of the following bills: SB 33, SB 376, SB 377, SB 408, HB 459, HB 473, HB 477

Energy Issues:
A critical element of economic growth is affordable, reliable power. That's doubly true for our rural areas. Stability for future electric rates, taking another look at previous efforts to restructure the utility industry and encouraging prompt, environmentally sound power generation in the state of Montana are important issues to the League of Rural Voters.

I support the passage of the following bills: SB 243 and SB 319.

Finally, thank you for standing with Montana's working families.

NAME	ADDRESS	CITY, STATE, ZIP
Harold Sant	PO Box 46	Whitehall, Mt. 59759
[illegible]	P.O. Box 526	Whitehall, MT 59759
Glenn Conover	160 WOODLAND ST	GREAT FALLS 59404
Ken Gibson	80 Z-T Road	Whitehall 59759
Paul Dab	P.O. Box 242	Whitehall, Mt 59759
Brian Alley	835 Whitman	Butte MT 59701
Jack Kouglanis	2826 WALNUT	Butte, MT. 59701
[illegible]	2240 Beloit Dr	Billings, MT 59102
[illegible]	930 HWY 2 W	Whitehall MT 59759
[illegible]	354 Whitehall	Whitehall MT 59759
Bob Schmidley	P.O. BOX 116	WISE RIVER MT 59762
[illegible]	65 South Boulder Rd Cardwell, MT 59721	
Tom Nicholson	P.O. Box 200	Whitehall, Mt. 59759
Mark Williams	P.O. Box 714	" " "
Kliff Klemm	21 Paul Gulch Rd.	Whitehall MT 59759
[illegible]	Box 90	Whitehall MT 59759
[illegible]	139 Harrison Ln	Whitehall, MT 59759

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NAME	ADDRESS	CITY, STATE, ZIP
Gene & Chris Longsford	P.O. 342	Whitehall, MT. 59759
Geraldine Boe	64 Boe Ln	Whitehall, MT 59759
Mark L. Boe	P.O. 427	Sheridan, MT 59749
Karen K. Stratton	60 BOE LANE	Whitehall MT 59759
William B. Bengtson	610 Cotton Hills Rd	Whitehall MT 59759
Linda Bengtson	61 Boe Lane	Whitehall, MT 59759
Dan J. Stratton	60 Boe Lane	Whitehall, MT 59759
Bob Sundstrand	Box 184	WHITEHALL MT 59759

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NAME	ADDRESS	CITY, STATE, ZIP
DONNA L. HEIKKINEN	PO Box 3293	Butte MT 59702
Richard A Smith	PO Box 1072	Whitehall, MT 59759
William J. Thaxter	2213 Colorado	Butte, MT. 59701
William E. Park	129 Yellowstone	Whitehall, mt. 59759
Vera Sharp	Box 433	whitehall MT 59759
Lynne L. Loomis	Box 238	Whitehall, MT 59759
Paul Bradley	3406 Mammoth Dr.	Butte 59701
Holly Wommacott	1921 Elm St.	Butte MT 59701
Mick J. Wommacott	1921 Elm St.	Butte MT 59701

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NAME	ADDRESS	CITY, STATE, ZIP
Joe Granvold	PO Box 593	Whitehall MT 59759
Kim Granvold	PO Box 593	whitehall MT 59759
Louis Lanshire	3 Box 211 Lv	Whitehall MT 59759
Linda Lanshire	3 Brazilko Ln	Whitehall MT 59759
John M. Jaksha	3800 Banks	Butte MT 59701
Sarah Jaksha	3800 Banks	Butte MT 59701

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NAME	ADDRESS	CITY, STATE, ZIP
Rachel Mihelich	3000 Moulton	Butte, Mt. 5970
Sherrie Mihelich	2850 Nettie	Butte, MT 59701
Nancy Mahoney	1036 Placer	Butte, MT 59701
Marion Williams	255 Placid Heights Dr.	Butte, MT 59701
[illegible]	2910 Kossuth	Butte MT 59701
Steven Mahoney	130 Calhoun	Butte, MT 59701
Lesa Mihelich	3209 Paxson Av	Butte MT 59701
Chad Mihelich	3209 Paxson Av	Butte MT 59701
Vickie Mihelich	3209 Paxson Ave	Butte, Mont. 5970
Wendy Baulkes	32 Bashaw Trail	Whitehall MT 59759
John Takkha	3200 Ottawa	Butte MT 5970[illegible]
Sandy Takkha	3200 Ottawa	Butte MT 59701
Mr. Diaz	705 Missoula Av.	Butte MT 59701
STACIE DIAZ	705 Missoula av.	Butte MT. 59701
Steve Booth	c/o 3209 Paxson Av	Butte Mt 59701
Lauri Booth	c/o 3209 Paxson Av	Butte MT 59701
Mark Mihelich	2850 Nettie	Butte MT 59701

LEAGUE OF RURAL VOTERS
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EXHIBIT 5
DATE 3-19-01
SB 377

March 19, 2001

Honorable Judy Martz: Governor of Montana
Honorable Karl Ohs: Lt. Governor of Montana
Honorable Tom Beck: Montana Senate
Honorable Dan McGee: Montana House of Representatives
Honorable Doug Mood: Montana House of Representatives
Honorable Gary Grimes: Montana Senate
Honorable Cindy Younkin: Montana House of Representatives
Honorable Gay Ann Masolo: Montana House of Representatives

I want to thank our State legislators for attempting to find balance and fairness for everyone in the MEPA process. This change will not harm our environment. We in the natural resources family don't want to destroy the environment. We work in it! It is our family's livelihood. If it were destroyed, it would destroy what we want for our children, that is, a healthy environment and a healthy economy for Montana. Making the MEPA permitting process work in a more timely manner will not destroy the environment.

Thank you again for trying to put balance in MEPA!

Julie Martin
Proud Wife and Mother of Loggers
Member, Women In Timber
Townsend, Montana

This letter was also sent to Editors of newspapers.

EXHIBIT 6
DATE 3-19-01
SB 377

ASARCO

March 19, 2001

Representative Cindy Younkin and Member of the House Natural Resources Committee;

I offer this letter in **support of SB 377** which proposes revision to MEPA.

I have over 20 years experience working with environmental permitting and environmental analysis in Montana. I have been involved with Asarco's attempts to permit the Rock Creek Mine Project (which has now been sold to Sterling Mining Company) for over 15 years. I have seen the environmental review process become more complex and significantly more protracted during that time. It has also become a venue for project opponents to delay projects. **Unfortunately, the additional time currently utilized in the permitting process does not appear to result in substantially better decisions on the part of Montana's regulatory agencies.**

In considering time limits to the environmental review process, I urge the Committee to recognize that, for complex projects such as a large mine, there are years of environmental study and permit review **prior to beginning the MEPA process.** The DEQ's finding that a permit application is complete in essence means that the Department has sufficient information to make a permit decision.

Revisions to the MEPA process are essential if Montana wants to attract future interest in developing our mineral resources. Thank you for your consideration of this bill.

Sincerely,

Douglas C Parker
ASARCO Incorporated

ASARCO Incorporated, 127 E. Main; #210, Missoula, MT 59802
(406) 728-8510
Fax No: (406) 728-3512

EXHIBIT 7
DATE 3-19-01
SB 377

My name is Greg Tollefson. I am from Missoula and I am here representing myself.. I would like to urge you to vote against Senate Bill 377.

As a three term public member of the EQC I have had considerable experience in watching the MEPA implementation process at work. And for all intents and purposes, MEPA as it was originally conceived and approved by this legislature, with only one dissenting vote, has worked very well. MEPA was a far-sighted piece of legislation that recognized both the rights of individual citizens of this state to a clean and healthful environment and the need to accommodate reasonable development of our natural resources. Over the 30 years since it was enacted, MEPA has served the purpose of assuring that the public is both well-informed about the potential consequences of state actions, and afforded adequate opportunity for citizen participation and input into the review process.

The key to MEPA's effectiveness has always been its flexibility. MEPA review is designed to accommodate a wide range of activities with great variability in technical complexity and gravity of potential consequences to the health of our natural environment. ~~Each~~ Most of the bills that have been brought forward this session for the stated purpose of "streamlining" the MEPA process will serve only to decrease its flexibility, therefore limiting its effectiveness.

In my six years on the EQC I ~~did not hear a single~~ do not recall many complaints about the timeframes for the MEPA review process. What I did hear, time and time again, were the voices of agency directors and personnel who claimed that agency resources were stretched to the limit. The biggest concern was about agencies that were unable to keep up with demands for MEPA analysis and compliance and enforcement responsibilities at the same time. Now, at a time when this legislature is considering significant decreases in the number of state employess, it is also considering this legislation that would require more work in less time from the reduced staff.

This legislation also fails to consider the variety in complexity of projects that are considered under MEPA. Arbitrarily shortened time-frames can only result in cursory and inadequate analysis. That, in turn, is likely to leave state permitting decisions more open to challenge and more likely to end up in litigation. The end result will probably be more protracted permitting processes, rather than the more streamlined process envisioned by the sponsors of this legislation. In the alternative, to play it safe and still meet

the time frames, a state agency may choose to deny a permit when further analysis and evaluation might, in fact, have justified permit approval.

I have seen no evidence to suggest that Senate Bill 377 or any of the other MEPA streamlining bills will have any positive effect on the economic situation in Montana. I would like to urge you, do not chip away at one of our fundamental environmental laws chasing the false hope that it will buoy our sagging economy.

MEPA is not broke. Don't try to fix it.

EXHIBIT 8
DATE 3-19-01
SB 377

NORTHERN PLAINS RESOURCE COUNCIL

The Grassroots of Montana

Testimony of Richard Parks on SB-377

Mister Chairman, Members of the Committee, my name is Richard Parks. I own and operate a sporting goods store and fishing outfitting business in Gardiner, Montana. Obviously the maintenance of the high quality waters in which my business partners, the fish, swim is of primary importance to me. Today I am representing myself and Northern Plains Resource Council. We oppose SB-377.

I know there are a flock of other witnesses so I wish to focus on just a two fatal flaws incorporated in this bill.

First of all, we are concerned with the special access rights for "project sponsors" that Section 1(3) sets up. Project sponsors are given the opportunity to appeal any decision that the permitting agency makes at any point during the MEPA process. This is neither a good nor necessary idea. The Environmental Quality Council just completed an interim study of the Montana Environmental Policy Act (MEPA). The EQC did not find sponsor access to decision makers to be a serious problem. The way in which this language is crafted places particular burdens on the departments that consider proposed actions, their directors, and their boards that could paralyze their ability to perform their substantive functions. It will, at the same time, create a lengthy paper trail.

Section 1(2) transfers the chaos and gridlock created by sub(3) above to the EQC. This creates another kind of problem. In 30 years of engagement with environmental policy in Montana, I have repeatedly heard legislative and administrative bodies be told or say that their decisions "are to be based on science, not politics or emotion." Since EQC is a legislative committee this politicizes permitting decisions. Again, nothing in the interim study suggested a need or any value in making such changes.

The Montana Constitution delineates the rights and duties of citizens. The Constitution does not give "project sponsors" special rights that are denied to the general public. That is, I believe, what sections 1(2) and 1(3) attempt to do.

Secondly, we are very concerned with the definition of "cumulative impacts," as defined in Section 1(11). Section 1 (11) limits cumulative impacts to "actions...under concurrent consideration by any agency through pre-impact statement studies, separate impact statement evaluations, or permit processing procedures."

In the first place environmentally significant actions may be taking place concurrently or be readily foreseeable that are either not yet in the permitting pipeline or not be subject to agency review. Actions of local governments, particularly subdivision approvals, and actions taking place under general permits or categorical exclusions come to mind as examples.

2401 Montana Avenue #200◆ Billings, Montana 59101◆phone (406) 248-1154 ◆ fax (406) 248-2110
e-mail: info@nprcmt.org ◆ *web site:* www.nprcmt.org

In the second place, piecemeal permitting within an overall project may invite abuse. The debacle resulting from considering the Pony mill permit in isolation from the mine owned by the same parties but under a separate corporate shell is but one example of the results we can anticipate from this section of the bill if enacted.

There are many problems with this bill and I urge the committee to give it a DO NOT PASS vote.

Thank you for your attention.

EXHIBIT 9
DATE 3-19-01
SB 377

P.O. Box 1510, Helena 59624 3/19/01

My name is Bob Stevens. My remarks will take 2 minutes and I am with valid reason opposed to this bill.

I wonder what your reaction would be if the CEO of Royal Dutch Shell should step up to this podium today, followed by the head of Fuel Cell Development for Daimler-Chrysler and both announce to you not just the Twilight of the Fossil Fuel Era but its forthcoming end. Of course they wouldn't do that, you might say, but in slightly different style that is precisely what they did do last night March 18 on a one hour CNN special entitled the Race to the Sun which was all about alternative energy. I will return to this subject momentarily.

My wife and I have something germane to add to this debate over MEPA. We have lived near Helena entirely off the electric grid for the past 8 years. What evolved from this experience has been the verifiable fact that we consume only 1/3 of the electrical energy of the average home in Montana, and in doing so I can assure you that we live as comfortably as anyone in this room. Our experience in one family's conservation of energy, which on a larger scale, would be the equivalent of new construction without any downside to our air, our land, or our water

conservation of energy will also yield almost immediate results, all of which contrast sharply with your chosen path which is to do mischief to MEPA then hope for new, conventional generation capacity to relieve our energy difficulties. Sorry about that but there is new evidence that we are about to or already have crossed over from the now weakening 19th and 20th century industrial culture to something new and much better.

Last night Amory Lovins, CEO of the private sector Rocky Mountain Institute at Snowmass Colorado was also an expert witness on the CNN energy program Mr Lovins minced no words. He outlined with blunt candor the acceleration into energy alternatives which is presently occurring almost worldwide, though regretably little seen so far in Montana. This, he said, is not a drift. It's a rush. The Toyota Prius is only a way point en route to hydrogen powered fuel cell energy and many other profound changes.

I respectfully request that you table this bill. Your considerable talents can be more productively engaged. I now leave a copy of RMI latest newsletter with the secretary to be included in the record. Thank you

EXHIBIT 10
DATE 3-19-01
SB 377

Madame Chair and Members of the Committee:

I'm Steve Gilbert from Helena, a consulting biologist representing myself. I've worked on all sides of the MEPA process for over 25 years. I've gathered baseline biological data, provided technical data for portions of MEPA documents, written MEPA documents from the ground up, applied for grants requiring MEPA documentation. It is a good tool that has worked well.

It is a process that gives guidance to state agencies charged with the responsibility of protecting our resources. There are some good laws that back up the process , laws that ostensibly protect water quality, air quality and provide for reclamation. None, however, protect wildlife, fish, native vegetation, and the threat of noxious weeds.

I appreciate your concern about the economy but someone has provided false information that a healthy economy requires fewer environmental processes and controls. I'd like to see any peer-reviewed data produced in the past ten years that suggests our economy can only blossom if you make the environmental permitting process easier for industrial development. Show me one economic study that says that building electrical generators, railroads, or mining gold and coal will provide Montana with long-term positive benefits. There are, however, recent studies that show us a clean and healthy environment is something we can continue to bank on over the long haul. To protect our environment in this live-for-today atmosphere will not only require the vigilance of Montanans, but it will require the level of environmental process provided by MEPA.

It is clear to me that many people may not know much about how environmental protection really works and many do not understand the importance of the framework developed to support it. We heard from Governor Martz a few weeks ago during the MFSA hearing that we needn't worry about our environment because MEPA would be there to protect it. Hello, any one home?

We also heard that we have great laws in place to protect the environment. There are laws, but they are subject to the exact same process reflected by bills to gut MEPA. They have been compromised and re-compromised by legislatures. They require careful application by state agencies to work properly. Who runs our state agencies? Yes, governor-appointed directors. Politics guiding environmental decision-making. Under recent administrations, directors of most of our state agencies we might look to as watch-dogs of our environment have avoided doing important parts of their jobs which would support these laws. I don't expect this to change.

Do you know who looks out for environmental concerns? I can assure you it is never the water or air or the fish and wildife and vegetation looking out for their own interests. It's rarely the directors of any agency, but it is sometimes the tenacity of a few honest scientists working for agencies, but whose hands are tied by internal and administrative politics. Who does look out for the environment? It's the people supposedly being represented by this bill to streamline the process. How do they do their work? They come here to appeal to you in the legislature, they write you, call you, try to reach out to you. Unfortunately, this bill represents industry...not us, not the environment.

So how does the environment have a voice through the streamlining process? Litigation is how. Litigation is counter-productive to everything except to the wallets of the attorneys and often the protection of the environment. This bill is one of several that will create a litigative atmosphere unlike anything you have ever seen.

Please don't suggest the next set of laws down the line will protect the environment. Don't suggest it's important to balance good jobs and environmental protection unless you vote to maintain the regulatory framework of MEPA.

Do not vote for this bill that offers to streamline the processes. This is akin to taking the wings off an airplane to streamline it. **Vote NO** on this bill.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN CINDY YOUNKIN**, on March 26, 2001 at 3:00 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Cindy Younkin, Chairman (R)
Rep. Rick Dale, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Larry Cyr (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Rick Laible (R)
Rep. Jeff Laszloffy (R)
Rep. Douglas Mood (R)
Rep. Bob Story (R)
Rep. Brett Tramelli (D)
Rep. David Wanzenried (D)

Members Excused: Rep. Gail Gutsche, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Rod Bitney (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)

Members Absent: None.

Staff Present: Holly Jordan, Committee Secretary
Larry Mitchell, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 449, 3/16/2001; SJ 13, 3/16/2001; SB 484, 3/16/2001
Executive Action: SB 449; SJ 13; SB 484; HB 69; SB 377; SB 455

out of the process. If the DEQ and the mining company disagree on the bonding amount they will go to a third party.

Vote: Motion that **REMAINING AMENDMENTS BE ADOPTED carried 15-5 with Eggers, Erickson, Gutsche, Hurdle, and Wanzenried voting no.**

Motion: **REP. DALE** moved that **HB 69 DO PASS AS AMENDED.**

Discussion:

REP. CURTISS asked **REP. DALE** does the bill, as amended include the sapphire mines? **REP. DALE** stated, to the extent that they have an operating permit yes. If they are under 5 acres disturbance they are still in the small miner exclusion. If they are over the 5 acre disturbance they would have to be bonded anyway.

Vote: Motion that **HB 69 DO PASS AS AMENDED carried 17-3 with Curtiss, Hurdle, and Wanzenried voting no.**

EXECUTIVE ACTION ON SB 377

{Tape : 1; Side : B; Approx. Time Counter : 53.8}

Motion: **REP. DALE** moved that **SB 377 BE CONCURRED IN.**

Motion: **REP. DALE** moved that **AMENDMENT SB037709.alm BE ADOPTED.**

Discussion:

REP. DALE passed out the amendment **EXHIBIT(nah68a07)** and explained it.

REP. CLANCY asked **REP. DALE**, what is the purpose of amendment number 2? **REP. DALE** stated if all other parts of the law were referred to there would be several explanation of completeness. This new language makes it exclusive to the MEPA law.

Vote: Motion that **AMENDMENT SB037709.alm BE ADOPTED carried unanimously.**

Motion: **REP. DALE** moved that **SB 377 BE CONCURRED IN AS AMENDED.**

Discussion:

Mr. Mitchell passed out another set of amendments **EXHIBIT(nah68a08)** and briefly explained them.

Motion: **REP. LASZLOFFY** moved that **AMENDMENT SB037704.alm BE ADOPTED.**

Discussion:

REP. LASZLOFFY asked **Michael Kakuk** to explain the amendments.

{Tape : 2; Side : A; Approx. Time Counter : 0.1}

Mr. Kakuk explained the amendments.

REP. GUTSCHE asked, is this amendment amending other statutes of law that aren't in this piece of legislation? **REP. YOUNKIN** stated yes.

REP. HARRIS asked **Mr. Mitchell** if this set of amendments is within the title of the original bill. **Mr. Mitchell** stated, because SB 377 seeks to provide time limits the amendment probably does fit.

Vote: Motion that **AMENDMENT SB 037704.alm BE ADOPTED carried 14-6 with Cyr, Eggers, Erickson, Gutsche, Hurdle, and Wanzenried voting no.**

Mr. Mitchell passed out another set of amendments **EXHIBIT(nah68a09).**

Motion: **REP. DALE** moved that **AMENDMENT SB037708.alm BE ADOPTED.**

Discussion:

Mr. Mitchell explained the amendments.

REP. LASZLOFFY asked **REP. YOUNKIN** where other than district court is suit filed in these instances? **REP. YOUNKIN** stated this clarification is to make sure it is not going to be some sort of contested case hearing before the Board of Environmental Review. If it is not going to be in district court the only other place it could be is in federal court and these kinds of cases are not going to be in federal court unless they involve federal land some way or another. **REP. HARRIS** stated it could be in federal court but it would have to be a complicated case where NEPA may be involved. If the case hearing is an alternative we may not want to knock that out. **REP. YOUNKIN** stated she did not know if that is an option.

REP. LASZLOFFY asked **REP. HARRIS** if it is worded this way, as in the amendment, how do we know that it needs to be brought in the state district court rather than the federal district court? **REP. HARRIS** stated this would introduce a little bit of confusion. He gave an example. He stated that we should not create that confusion.

REP. YOUNKIN stated, if federal law applies and you are in federal court you probably won't be remanded back to state court.

REP. HARRIS stated, as better drafting it should say, "May only be brought in district court or federal district court where appropriate."

Motion: **REP. HARRIS** moved that a **SUBSTITUTE AMENDMENT WITH LANGUAGE AS ABOVE STATED BE ADOPTED.**

Discussion:

REP. HARRIS explained his substitute amendment.

REP. HOLDEN asked if it could be worded, "state or federal district court"? **REP. HARRIS** gave an example why his wording would be better.

REP. YOUNKIN explained what the substitute amendment is.

REP. LAIBLE asked **REP. HARRIS** what would cause this to go to federal court? **REP. HARRIS** stated, there might be a larger federal case such as a NEPA case. He gave an example.

Vote: Motion that **AMENDMENT SB037708.alm PLUS THE SUBSTITUTE AMENDMENT BE ADOPTED carried 11-9 with Bales, Clancy, Cyr, Eggers, Erickson, Gutsche, Hurdle, Tramelli, and Wanzenried voting no.**

Motion/Vote: **REP. DALE** moved that **SB 377 BE CONCURRED IN AS AMENDED. Motion carried 12-8 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried voting no.**

EXECUTIVE ACTION ON SB 455

{Tape : 2; Side : A; Approx. Time Counter : 23.5}

Motion: **REP. WANZENRIED** moved that **SB 455 BE CONCURRED IN.**

EXHIBIT 7
DATE 3-26-01
SB 377

Amendments to Senate Bill No. 377
3rd Reading Copy

Requested by Representative Rick Dale

For the House Natural Resources Committee

Prepared by Larry Mitchell
March 26, 2001 (3:30PM)

1. Page 2, line 11.
Strike: "365"
Insert: "180"

2. Page 4, line 4.
Strike: ", UNLESS OTHERWISE PROVIDED BY LAW,"
Insert: ", for the purpose of complying with this part,"

3. Page 4, line 6.
Following: "application"
Strike: remainder of line 6
Insert: "sufficient for the agency to approve the application under the applicable statutes and rules."

- END -

The following exhibit is more than the 10 (ten) page scan limit.

Exhibit: 8

3·26·01

SB 377

The complete exhibit is located with the minutes are at the
Montana Historical Society Archives
225 North Roberts
Helena, MT 59620-1202
[406] 444-4775

EXHIBIT 9
DATE 3-26-01
SB 377

Amendments to Senate Bill No. 377
3rd Reading Copy

Requested by Senator Duane Grimes

For the House Natural Resources Committee

Prepared by Larry Mitchell
March 26, 2001 (8:53AM)

1. Title, line 8.
Following: "THAT"
Strike: "ADMINISTRATIVE OR"

2. Title, line 9.
Following: "ACT"
Strike: "BE BROUGHT"
Insert: "MAY ONLY BE BROUGHT IN DISTRICT COURT"

3. Page 4, line 15.
Following: "involves"
Insert: "state agency-initiated actions on"

4. Page 7, line 3.
Following: "ACTION"
Insert: "and may only be brought in district court"

5. Page 7, line 6 through line 8.
Strike: subsection (b) in its entirety
Renumber: subsequent subsection

6. Page 7, line 9.
Following: "(4)(a)"
Strike: "that is brought before a district court"

7. Page 7.
Following: line 14
Insert: "NEW SECTION. **Section 5. Coordination instruction.** (1) If House Bill No. 473 and [this act] are both passed and approved, then [section 2(3)] of House Bill No. 473, defining "project sponsor", is void.

(2) If House Bill No. 459 and [this act] are both passed and approved, then [section 2(3)] of House Bill No. 459, defining "project sponsor", is void."
Renumber: subsequent section

- END -

HOUSE OF REPRESENTATIVES

ROLL CALL

NATURAL RESOURCES

DATE March 26, 2001

NAME	PRESENT	ABSENT	EXCUSED
CINDY YOUNKIN	✓		
RICK DALE	✓		
GAIL GUTSCHE	✓ 1/2		
GILDA CLANCY	✓		
LARRY CYR	✓		
KEITH BALES			✓ 1/2
BILL EGGERS			✓
LINDA HOLDEN	✓		
BRETT TRAMELLI	✓		
RICK LAIBLE	✓		
DOUGLAS MOOD	✓		
DAVID WANZENRIED	✓		
JEFF LASZLOFFY	✓		
RON ERICKSON			✓
AUBYN A. CURTISS	✓		
CHRISTOPHER HARRIS	✓		
ROD BITNEY			✓
DEE BROWN	✓		
JOAN HURDLE	✓		
BOB STORY	✓		
LARRY MITCHELL	✓		
HOLLY JORDAN	✓		

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **Senate Bill 377** (third reading copy - blue) **be concurred in as amended**.

Signed: Cindy Younkin
Representative Cindy Younkin, Chair

To be carried by Representative Douglas Mood

And, that such amendments read:

1. Title, line 8.
Strike: "REQUIRING"
Insert: "PROVIDING"
Following: "THAT"
Strike: "ADMINISTRATIVE OR"

2. Title, line 9.
Following: "ACT"
Strike: "BE BROUGHT"
Insert: "MAY ONLY BE BROUGHT IN DISTRICT COURT OR FEDERAL COURT"

3. Title, line 10.
Following: "ACTION;"
Strike: "AMENDING SECTION 75-1-201, MCA"
Insert: "PROVIDING AN EXCEPTION TO PERMITTING TIME LIMITS IF BOARD REVIEW OF CERTAIN AGENCY DECISIONS IS REQUESTED; AMENDING SECTIONS 75-1-201, 75-2-211, 75-2-218, 75-10-922, 75-20-216, 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, AND 82-4-432, MCA"

4. Page 2, line 4.
Following: "(4)"
Insert: "(a)"

5. Page 2, line 8.
Strike: "(a)"
Insert: "(i)"

Committee Vote:
Yes 12, No 8.

3/28 4:45

Renumber: subsequent subsections

6. Page 2, line 11.
Strike: "365"
Insert: "180"

7. Page 2.
Following: line 11
Insert: "(b) The period of time between the request for a review by a board and the completion of a review by a board under [section 1(5) of Senate Bill No. 408, section 1(1)(b)(iv)(C)(III) of House Bill No. 459,] or subsection (10) of this section may not be included for the purposes of determining compliance with the time limits established for conducting an environmental review under this subsection or the time limits established for permitting in 75-2-211, 75-2-218, 75-10-922, 75-20-216, 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, and 82-4-432."

8. Page 3, line 12 through line 15.
Strike: "THE PERIOD" on line 12 through "SECTION." on line 15

9. Page 4, line 4.
Strike: ", UNLESS OTHERWISE PROVIDED BY LAW,"
Insert: ", for the purpose of complying with this part,"

10. Page 4, line 6.
Following: "application"
Strike: remainder of line 6
Insert: "sufficient for the agency to approve the application under the applicable statutes and rules."

11. Page 4, line 11.
Strike: "an"
Insert: "a state"

12. Page 4, line 13.
Following: "environment"
Insert: "as required under this part"

13. Page 4, line 15.
Following: "involves"
Insert: "state agency-initiated actions on"

14. Page 7, line 3.
Following: "ACTION"
Insert: "and may only be brought in district court or in federal court, whichever is appropriate"

15. Page 7, line 6 through line 8.
Strike: subsection (b) in its entirety
Renumber: subsequent subsection

16. Page 7, line 9.

Following: "(4)(a)"
Strike: "that is brought before a district court"

17. Page 7.
Following: line 10
Insert: "**Section 4.** Section 75-2-211, MCA, is amended to read:

"**75-2-211. Permits for construction, installation, alteration, or use.** (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) ~~Not~~ Except as provided in [section 1(4)(b)], not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt

from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) ~~If~~ Except as provided in [section 1(4)(b)], if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application. The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department on request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(c) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall act on the permit application within the time period provided for in 75-2-215(3)(e).

(d) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a

timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.""

Insert: "Section 5. Section 75-2-218, MCA, is amended to read:

"75-2-218. **Permits for operation -- application completeness -- action by department -- application shield -- review by board.** (1) An application for an operating permit or renewal is not considered filed until the department has determined that it is complete. An application is complete if all fees required under 75-2-220 and all information and completed application forms required under 75-2-217 have been submitted. A complete application must contain all of the information required for the department to begin processing the application. If the department fails to notify the applicant in writing within 60 days after submittal of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed on the date of the department's receipt of the application. The department may request additional information after a completeness determination has been made. The department shall adopt rules that contain criteria for use in determining both when an application is complete and when additional information is required after a completeness determination has been made.

(2) Except as provided in [section 1(4)(b)] and subsection (3) of this section, the department shall, consistent with the procedures established under 75-2-217, approve or disapprove a complete application for an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing. Failure of the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(3) The board may by rule provide for a transition schedule for both the submittal to the department of initial applications for operating permits by existing sources and action by the department on these initial permit applications. The board may require that one-third of all operating permit applications required for existing sources be submitted within the first calendar year after the adoption of rules implementing an

operating permit program under 75-2-217. Any transition schedule for action by the department must ensure that all permit applications required under 75-2-217 and this subsection for existing sources will be acted upon by the department before November 15, 1997.

(4) If an applicant submits a timely and complete application for an operating permit, the applicant's failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and complete application for an operating permit renewal, the expiration of the applicant's existing operating permit is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The applicant is not entitled to the protection of this subsection if the delay in final action by the department on the application results from the applicant's failure to submit in a timely manner information requested by the department to process the application.

(5) Except as provided in subsection (8), if the department approves or denies an application for an operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any person that participated in the public comment process required under 75-2-217(7) may request a hearing before the board. The request for hearing must be filed within 30 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(6) Except as provided in subsection (8), the department's decision on any application is not final until 30 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

(7) The requirements of subsections (5) and (6) apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under 75-2-217 and this section is not subject to review by the board or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is considered to be in compliance with the requirements of this chapter only if the permit expressly includes those requirements or an express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under 75-2-217.""

Insert: "Section 6. Section 75-10-922, MCA, is amended to read:

"75-10-922. Study, evaluation, and report on proposed

facility. (1) After receipt of an application, the department shall within 90 days notify the applicant in writing that:

(a) the application is accepted as complete; or

(b) the application is not complete and list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-10-913, 75-10-914, and 75-10-916 through 75-10-922, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-10-929. The department shall use, to the extent it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) ~~Within~~ Except as provided in [section 1(4)(b)], within 1 year following acceptance of a complete application for a facility, the department shall make a report to the board that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, Title 75, chapter 1, if applicable.""

Insert: "**Section 7.** Section 75-20-216, MCA, is amended to read:

"**75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies.** (1) After receipt of an application, the department shall within 60 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and shall list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department shall use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Except as provided ~~for~~ in [section 1(4)(b)] and 75-20-231, the department shall issue within 1 year following the date of acceptance of an application any decision, opinion, order, certification, or permit required under the laws, other than those contained in this part, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws.

Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a preliminary decision by the department and pursuant to rules adopted by the department, the department shall provide an opportunity for public review and comment.

(4) Except as provided in [section 1(4)(b)] and 75-20-231, within 1 year following acceptance of an application for a facility, the department shall issue a report that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall issue its report within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) For projects subject to joint review by the department and a federal land management agency, the department's certification decision may be timed to correspond to the record of decision issued by the participating federal agency.

(6) The departments of transportation; commerce; fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report.""

Insert: "Section 8. Section 75-20-231, MCA, is amended to read:

"75-20-231. **Expedited review.** (1) ~~The~~ Except as provided in [section 1(4)(b)], the department shall issue a certification decision within 180 days from the date on which an application is considered complete for a facility that:

(a) is unlikely to result in significant adverse environmental impacts based on the criteria listed in 75-20-232; or

(b) is presently in existence and proposed for upgrade, reconstruction, or relocation and is unlikely to result in significant impacts pursuant to 75-20-232.

(2) A facility that qualifies for expedited review is exempt from undergoing an alternative siting study, except as provided in 75-1-201.""

Insert: "Section 9. Section 76-4-125, MCA, is amended to read:

"76-4-125. **Review of development plans -- land divisions excluded from review.** (1) Plans and specifications of a subdivision, as defined in this part, must be submitted to the reviewing authority, and the reviewing authority shall indicate by certificate that it has approved the plans and specifications

and that the subdivision is not subject to a sanitary restriction. The plan review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present to the reviewing authority a preliminary plan of the proposed development, whatever information the developer feels necessary for its subsequent review, and information required by the reviewing authority.

(b) ~~The~~ Except as provided in [section 1(4)(b)], the reviewing authority shall give final action of the proposed plan within 60 days unless an environmental impact statement is required, at which time this deadline may be increased to 120 days.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that a dwelling or structure requiring water or sewage disposal may not be erected on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule; and

(d) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer, if:

(i) the remainder is served by a public or multifamily sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system that was constructed prior to April 29, 1993, and, if required when installed, was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116(1)(i), a local health officer may require that, prior to the transfer of the parcel to be segregated from the remainder referenced in subsection (2)(d)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield.""

Insert: "Section 10. Section 82-4-122, MCA, is amended to read:

"82-4-122. Application and approval of permit. (1) A person desiring a mine-site location permit shall file with the department an application ~~which shall~~ that must contain a reclamation plan for any preparatory work and ~~such~~ any other information the department ~~deems~~ considers necessary to determine if the proposed area to be affected by the operation is appropriate for the location of a new strip mine or a new

underground mine. The department may require any information included in but not limited to an application for a strip-mining permit or underground-mining permit as required by part 2 of this chapter.

(2) ~~The~~ Except as provided in [section 1(4)(b)], the department shall notify the applicant within 365 days of receipt of a complete application if the proposed site is an acceptable location for development of a new strip mine or a new underground mine. If the site is approved, the department shall issue the applicant a mine-site location permit. If the location is not approved, the department shall notify the applicant in writing, setting forth reasons why the location is not acceptable. The department shall also notify the applicant within 365 days of receipt of a complete application whether the proposed reclamation plan is or is not acceptable. If the plan is not acceptable, the department shall set forth the reasons for nonacceptance of the plan. It may propose modifications, delete areas, or reject the entire plan.""

Insert: "Section 11. Section 82-4-231, MCA, is amended to read:

"82-4-231. **Submission of and action on reclamation plan.** (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and a reclamation plan for the area of land affected by the operation. In developing a method of operation and plans of backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, and reclamation, all measures ~~shall~~ must be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan ~~shall~~ must set forth in detail the manner in which the applicant intends to comply with this section and 82-4-232 through 82-4-234, as amended, and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for permit or major revision of a permit, which ~~shall~~ must contain the reclamation plan, ~~shall~~ must be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the

application. If the department determines that the application is not administratively complete, it shall specify in the notice those items ~~which~~ that the application must address. The application ~~shall be~~ is presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, the applicant shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest ~~which~~ that is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority ~~shall have the right to~~ may file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons ~~therefor~~ for its decision within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference ~~shall~~ may not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined to

be necessary prior to making a permit decision, the department shall complete and publish the final environmental impact statement within 365 days of the date of notice provided pursuant to subsection (5).

(d) ~~Within~~ Except as provided in [section 1(4)(b)], within 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. ~~If~~ Except as provided in [section 1(4)(b)], if the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons therefor within 10 days of the informal conference.

(f) ~~The~~ Except as provided in [section 1(4)(b)], the department shall prepare written findings granting or denying the permit or major revision application in whole or in part no later than 45 days from the date the application is determined acceptable or from the publication of the final environmental impact statement, whichever occurs later. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when ~~such~~ the concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an

interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing ~~shall~~ must be held within 30 days of the request. For purposes of a hearing, the department may order site inspections of the area pertinent to the application. The department shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. No person who presided at the informal conference may either preside at the hearing or participate in the decision thereon.

(10) In addition to the method of operation, grading, backfilling, subsidence stabilization, water control, highwall reduction, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1) of this section, shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the department approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant ~~must~~ is required to show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health, or constitute a hazard to domestic livestock or to a viable agricultural operation, or violate any other restrictions the department may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in ~~such~~ a manner as to prevent or minimize land subsidence. The remaining waste material ~~shall~~ must be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when

no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of ~~such~~ those resources where practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface water and ground water systems both during and after strip- or underground-coal-mining operations and during reclamation by:

(i) avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but ~~in no event shall~~ contributions may not be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement of strip- or underground-mining operations, ~~such~~ with the structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(vii) ~~such~~ any other actions as the department may prescribe;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except ~~where~~ when the department determines that the resulting impoundment of water in ~~such~~ the auger holes may create a hazard to the

environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in ~~such~~ proximity to ~~such~~ the channel so as to seriously alter the normal flow of water;

(q) meet ~~such~~ other criteria as are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under 82-4-223, as amended, or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in such a manner as to protect areas outside the permit area.""

Insert: "Section 12. Section 82-4-337, MCA, is amended to read:

"82-4-337. **Inspection -- issuance of operating permit -- modification, amendment, or revision.** (1) (a) The department shall review all applications for operating permits for completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b). The department shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within the appropriate review period.

(b) ~~Unless~~ Except as provided in [section 1(4)(b)], unless the review period is extended as provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the department does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within the time period,

the operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond that will be required.

(c) A permit may not be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) the information and certification have been submitted pursuant to 82-4-335(9); and

(iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(7).

(d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible because of extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) ~~If~~ Except as provided in [section 1(4)(b)], if the department determines that additional time is needed for analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.

(iii) ~~If~~ Except as provided in [section 1(4)(b)], if the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review. The applicant may by written waiver extend this time period.

(iv) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(v) Failure of the department to act upon a complete application within the extension period constitutes approval of the application, and the permit must be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the department as provided in this part.

(3) The operating permit must provide that the reclamation

plan may be modified by the department, upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so that they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

(4) During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

(5) Applications for major amendments must be processed in the same manner as applications for new permits.

(6) Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The board may by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

(7) If the department demonstrates that a revision may result in a significant environmental impact that was not previously and substantially evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. ~~Applications~~ Except as provided in [section 1(4)(b)], applications for minor amendments and other revisions must be processed within 30 days of receipt of an application.""

Insert: "Section 13. Section 82-4-432, MCA, is amended to read:

"82-4-432. **Application for permit -- contents -- issuance -- amendment.** (1) Applications for a permit must be made upon a form furnished by the department. The form must contain the following:

(a) the name of the operator and, if other than the owner of the land, the name and address of the owner;

(b) the type of operation to be conducted;

(c) the volume of earth to be removed, as accurately as the volume may then be estimated, and the volume that has been previously removed, if any;

(d) the location of the operation by legal subdivision, section, township and range, and county;

(e) the date when the operation was or will be commenced; and

(f) a statement that the applicant has the right and power by legal estate owned to mine by opencut mining the lands described.

(2) The application must be accompanied by:

(a) a bond or security meeting the requirements as set out in this part;

(b) a fee of $50 for an application to mine bentonite, clay, scoria, sand, or gravel;

(c) a statement from the local governing body having jurisdiction over the area to be mined certifying that a proposed sand and gravel opencut mine and its operating and reclamation plans comply with applicable local zoning regulations adopted under Title 76, chapter 2; and

(d) the operator's plan of operation and a complete reclamation plan.

(3) If, prior to applying for a permit, a person notifies the department of the intention to submit an application and requests the department to examine the area to be mined, the department shall cause the area to be examined and make recommendations to the person regarding reclamation. The person may request a meeting with the department. The department shall hold a meeting if requested.

(4) ~~Upon~~ Except as provided in [section 1(4)(b)], upon receipt of a complete application containing all items listed in subsections (1) and (2), the department shall, within 30 days, notify the person if it has approved or denied the application. The department may for sufficient cause extend its period of review for an additional 30 days if it notifies the person of the extension prior to the end of the original 30-day period. Upon approval of the application, the department shall issue a permit to the operator that entitles the operator to continue or engage in opencut mining on the land described in the application.

(5) An operator desiring to have a permit amended to cover additional contiguous or nearby land may file an amended application with the department. Upon receipt of the amended application and any additional bond as may be required and upon agreement to the terms of the amendment by the parties, the department may issue an amendment to the original permit covering the additional land described in the amended application without the payment of any additional fee.

(6) An operator may withdraw any land covered by a permit, except affected land, by notifying the department of the withdrawal, in which case the penalty of the bond or security filed by the operator pursuant to the provisions of this part must be reduced proportionately.""

Renumber: subsequent sections

18. Page 7.
Following: line 14
Insert: "NEW SECTION. **Section 15. Coordination instruction.** (1) If Senate Bill No. 408 is not passed and approved containing language that authorizes a board review of an agency significance determination, then the reference to Senate Bill No. 408 in [section 1(4)(b) of this act] is void.

(2) If House Bill No. 459 is not passed and approved containing language that authorizes a board review of an agency alternative analysis determination, then the reference to House Bill No. 459 in [section 1(4)(b) of this act] is void.

(3) If House Bill No. 473 and [this act] are both passed and

approved, then [section 2(3)] of House Bill No. 473, defining "project sponsor", is void.

(4) If House Bill No. 459 and [this act] are both passed and approved, then [section 2(3)] of House Bill No. 459, defining "project sponsor", is void."

Renumber: subsequent section

- END -

COMMITTEE ABSENTEE BALLOT

Date: 3/26/01

I hereby authorize Rep. Dale

to cast my vote(s) as follows:

SB 377 Amendment	37709	Yes
	37704	Yes
	37708	Yes
SB 377 As Amended		Yes

Representative [signature]

Harris Amend	Yes

COMMITTEE ABSENTEE BALLOT

Date: 3-26-01

I hereby authorize Rep. Gail Gutsche

to cast my vote(s) as follows:

HB 69 Amendment #1 - NO
" " #2 - NO
HB 69 - yes
HB 377 Amendments - NO
HB " " - NO
HB 377 - NO
SB 455 (AMENDED) YES

Representative Beachgeyer

COMMITTEE ABSENTEE BALLOT

Date: 3-26-01.

I hereby authorize Rep. Gutsche

to cast my vote(s) as follows:

HB69 Amendment #1 - NO
" " #2 - NO
HB 69 - yes
HB 377 amendments - NO
HB 377 " - NO
HB 377 - NO
SB 405 (AMENDED) yes

Representative Rep Crabb

HB 69 "yes" on Dale amendment
"no" on HB 69

Vote for me as you do on all other motions, amendments and bills

Thanks
Robyn Curtis

Under 5 acres disturbance

COMMITTEE PROXY

DATE_____

I request to be excused from the_____

Committee meeting this date because of other commitments. I desire to leave my proxy vote with_____

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/ AMENDMENT	AYE	NO
SB 977	Aye	
SB 455	Aye	
SB 3770		
Amend 37709	✓	
Amend 37704	✓	
Amend 37708	✓	
Harris Amend	✓	

SENATE BILL/AMENDMENT	AYE	NO

Amend with Dale

Rep._____

(Signature)

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COMMITTEE PROXY

DATE 3/26/01

I request to be excused from the House Natural Resources Committee meeting this date because of other commitments. I desire to leave my proxy vote with Rick Dale

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/ AMENDMENT	AYE	NO
SB 455 Amend	✓	

SENATE BILL/AMENDMENT	AYE	NO
SB 449 Amend	✓	
SB As Amended	✓	
SB 484 Amend.	✓	
Amend.	✓	
SB 484 As Amended	✓	
HB 69 5-9, 12, 13	✓	
HB 69 The Rest	✓	
HB 69 As Amended	✓	
SB 455	✓	
SB 377 Amend 37709	✓	
37704	✓	
37708	✓	
Harris Amend	✓	

Rep. Karl Butterfield

(Signature)

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AN ACT REVISING THE MONTANA ENVIRONMENTAL POLICY ACT; PROVIDING TIME LIMITS AND PROCEDURES FOR CONDUCTING ENVIRONMENTAL REVIEWS; PROVIDING DEFINITIONS; PROVIDING THAT LEGAL CHALLENGES TO ACTIONS UNDER THE MONTANA ENVIRONMENTAL POLICY ACT MAY ONLY BE BROUGHT IN DISTRICT COURT OR FEDERAL COURT WITHIN 60 DAYS OF A FINAL AGENCY ACTION; PROVIDING AN EXCEPTION TO PERMITTING TIME LIMITS IF BOARD REVIEW OF CERTAIN AGENCY DECISIONS IS REQUESTED; AMENDING SECTIONS 75-1-201, 75-2-211, 75-2-218, 75-10-922, 75-20-216, 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, AND 82-4-432, MCA; AND PROVIDING AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Environmental review procedure. (1) (a) Except as provided in subsection (1)(b), an agency shall comply with this section when completing any environmental review required under this part.

(b) To the extent that the requirements of this section are inconsistent with federal requirements, the requirements of this section do not apply to an environmental review that is being prepared jointly by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that must comply with the requirements of the National Environmental Policy Act.

(2) A project sponsor may, after providing a 30-day notice, appear before the environmental quality council at any regularly scheduled meeting to discuss issues regarding the agency's environmental review of the project. The environmental quality council shall ensure that the appropriate agency personnel are available to answer questions.

(3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the agency regarding an environmental review, the project sponsor may submit a written request to the agency director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow the agency to prepare for the meeting. If the issues remain unresolved after the

meeting with the agency director, the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency and the board to prepare for the meeting.

(4) (a) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental review process, an agency is subject to the time limits listed in this subsection (4) unless other time limits are provided by law. All time limits are measured from the date the agency receives a complete application. An agency has:

(i) 60 days to complete a public scoping process, if any;

(ii) 90 days to complete an environmental review unless a detailed statement pursuant to 75-1-201(1)(b)(iv) is required; and

(iii) 180 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).

(b) The period of time between the request for a review by a board and the completion of a review by a board under [section 1(5) of Senate Bill No. 408, section 1(1)(b)(iv)(C)(III) of House Bill No. 459,] or subsection (10) of this section may not be included for the purposes of determining compliance with the time limits established for conducting an environmental review under this subsection or the time limits established for permitting in 75-2-211, 75-2-218, 75-10-922, 75-20-216, 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

(5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing that an extension is necessary and stating the basis for the extension. The agency may extend the time limit one time, and the extension may not exceed 50% of the original time period as listed in subsection (4). After one extension, the agency may not extend the time limit unless the agency and the project sponsor mutually agree to the extension.

(6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(7) (a) Except as provided in subsection (7)(b), if an agency has not completed the environmental review by the expiration of the original or extended time period, the agency may not withhold a permit or other authority to act unless the agency makes a written finding that there is a likelihood that permit

issuance or other approval to act would result in the violation of a statutory or regulatory requirement.

(b) Subsection (7)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82, chapter 4, parts 1 and 2.

(8) Under this part, an agency may only request that information from the project sponsor that is relevant to the environmental review required under this part.

(9) An agency shall ensure that the notification for any public scoping process associated with an environmental review conducted by the agency is presented in an objective and neutral manner and that the notification does not speculate on the potential impacts of the project.

(10) An agency may not require the project sponsor to provide engineering designs in greater detail than that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate board, if any, review an agency's request regarding the level of design detail information that the agency believes is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(11) An agency shall, when appropriate, consider the cumulative impacts of a proposed project. However, related future actions may only be considered when these actions are under concurrent consideration by any agency through preimpact statement studies, separate impact statement evaluations, or permit processing procedures.

Section 2. Definitions. For the purposes of this part, the following definitions apply:

(1) "Appropriate board" means, for administrative actions taken under this part by the:

(a) department of environmental quality, the board of environmental review as provided for in 2-15-3502;

(b) department of fish, wildlife, and parks, the fish, wildlife, and parks commission as provided for in 2-15-3402;

(c) department of transportation, the transportation commission as provided for in 2-15-2502;

(d) department of natural resources and conservation for state trust land issues, the board of land commissioners as provided for in Article X, section 4, of the Montana constitution;

(e) department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation as provided for in 2-15-3303; and

(f) department of livestock, the board of livestock as provided for in 2-15-3102.

(2) "Complete application" means, for the purpose of complying with this part, an application for a permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures required to be included with the application sufficient for the agency to approve the application under the applicable statutes and rules.

(3) "Cumulative impacts" means the collective impacts on the human environment of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type.

(4) "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis required under this part by a state agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment as required under this part.

(5) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an action that requires an environmental review. If the action involves state agency-initiated actions on state trust lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 328).

(6) "Public scoping process" means any process to determine the scope of an environmental review.

Section 3. Section 75-1-201, MCA, is amended to read:

"**75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) <u>under this part,</u> all agencies of the state, except the legislature and except as provided in subsection (2), shall:

(i) use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have

an impact on the human environment;

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action;

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity; and

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(v) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(vi) recognize the national and long-range character of environmental problems and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved. The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law.

(b) When new, material, and significant evidence is presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court considers the evidence within the administrative

record under review. Immaterial or insignificant evidence may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

(4) (a) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate. Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(b) Any action or proceeding under subsection (4)(a) must take precedence over other cases or matters in the district court unless otherwise provided by law."

Section 4. Section 75-2-211, MCA, is amended to read:

"**75-2-211. Permits for construction, installation, alteration, or use.** (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) ~~Not~~ Except as provided in [section 1(4)(b)], not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) ~~If~~ Except as provided in [section 1(4)(b)], if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8),

if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application. The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department on request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(c) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall act on the permit application within the time period provided for in 75-2-215(3)(e).

(d) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board."

Section 5. Section 75-2-218, MCA, is amended to read:

"**75-2-218. Permits for operation -- application completeness -- action by department -- application shield -- review by board.** (1) An application for an operating permit or renewal is not considered filed until the department has determined that it is complete. An application is complete if all fees required under 75-2-220 and all information and completed application forms required under 75-2-217 have been submitted. A complete application must contain all of the information required for the department to begin processing the application. If the department fails to notify the applicant in writing within 60 days after submittal of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed on the date of the department's receipt of the application. The department may request additional information after a completeness determination has been made. The department shall adopt rules that contain criteria for use in determining both when an application is complete and when additional information is required after a completeness determination has been made.

(2) Except as provided in [section 1(4)(b)] and subsection (3) of this section, the department shall, consistent with the procedures established under 75-2-217, approve or disapprove a complete application for an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing. Failure of the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(3) The board may by rule provide for a transition schedule for both the submittal to the department of initial applications for operating permits by existing sources and action by the department on these initial permit applications. The board may require that one-third of all operating permit applications required for existing sources be submitted within the first calendar year after the adoption of rules implementing an operating permit program under 75-2-217. Any transition schedule for action by the department must ensure that all permit applications required under 75-2-217 and this subsection for existing sources will be acted upon by the department before November 15, 1997.

(4) If an applicant submits a timely and complete application for an operating permit, the applicant's failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits

a timely and complete application for an operating permit renewal, the expiration of the applicant's existing operating permit is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The applicant is not entitled to the protection of this subsection if the delay in final action by the department on the application results from the applicant's failure to submit in a timely manner information requested by the department to process the application.

(5) Except as provided in subsection (8), if the department approves or denies an application for an operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any person that participated in the public comment process required under 75-2-217(7) may request a hearing before the board. The request for hearing must be filed within 30 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(6) Except as provided in subsection (8), the department's decision on any application is not final until 30 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

(7) The requirements of subsections (5) and (6) apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under 75-2-217 and this section is not subject to review by the board or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is considered to be in compliance with the requirements of this chapter only if the permit expressly includes those requirements or an express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under 75-2-217."

Section 6. Section 75-10-922, MCA, is amended to read:

"**75-10-922. Study, evaluation, and report on proposed facility.** (1) After receipt of an application,

the department shall within 90 days notify the applicant in writing that:

(a) the application is accepted as complete; or

(b) the application is not complete and list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-10-913, 75-10-914, and 75-10-916 through 75-10-922, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-10-929. The department shall use, to the extent it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) ~~Within~~ Except as provided in [section 1(4)(b)], within 1 year following acceptance of a complete application for a facility, the department shall make a report to the board that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, Title 75, chapter 1, if applicable."

Section 7. Section 75-20-216, MCA, is amended to read:

"**75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies.** (1) After receipt of an application, the department shall within 60 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and shall list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department shall use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Except as provided ~~for~~ in [section 1(4)(b)] and 75-20-231, the department shall issue within 1 year following the date of acceptance of an application any decision, opinion, order, certification, or permit required under the laws, other than those contained in this part, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a preliminary decision by the department and pursuant to rules adopted by the department, the department shall provide an opportunity for public review and comment.

(4) Except as provided in [section 1(4)(b)] and 75-20-231, within 1 year following acceptance of an application for a facility, the department shall issue a report that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall issue its report within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) For projects subject to joint review by the department and a federal land management agency, the department's certification decision may be timed to correspond to the record of decision issued by the participating federal agency.

(6) The departments of transportation; commerce; fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

Section 8. Section 75-20-231, MCA, is amended to read:

"**75-20-231. Expedited review.** (1) ~~The~~ Except as provided in [section 1(4)(b)], the department shall issue a certification decision within 180 days from the date on which an application is considered complete for a facility that:

(a) is unlikely to result in significant adverse environmental impacts based on the criteria listed in 75-20-232; or

(b) is presently in existence and proposed for upgrade, reconstruction, or relocation and is unlikely to result in significant impacts pursuant to 75-20-232.

(2) A facility that qualifies for expedited review is exempt from undergoing an alternative siting study, except as provided in 75-1-201."

Section 9. Section 76-4-125, MCA, is amended to read:

"**76-4-125. Review of development plans -- land divisions excluded from review.** (1) Plans and specifications of a subdivision, as defined in this part, must be submitted to the reviewing authority, and the reviewing authority shall indicate by certificate that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction. The plan review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present to the reviewing authority a preliminary plan of the proposed development, whatever information the developer feels necessary for its subsequent review, and information required by the reviewing authority.

(b) ~~The~~ Except as provided in [section 1(4)(b)], the reviewing authority shall give final action of the proposed plan within 60 days unless an environmental impact statement is required, at which time this deadline may be increased to 120 days.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that a dwelling or structure requiring water or sewage disposal may not be erected on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid

waste disposal facilities as the department specifies by rule; and

(d) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer, if:

(i) the remainder is served by a public or multifamily sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system that was constructed prior to April 29, 1993, and, if required when installed, was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116(1)(i), a local health officer may require that, prior to the transfer of the parcel to be segregated from the remainder referenced in subsection (2)(d)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

Section 10. Section 82-4-122, MCA, is amended to read:

"**82-4-122. Application and approval of permit.** (1) A person desiring a mine-site location permit shall file with the department an application ~~which shall~~ that must contain a reclamation plan for any preparatory work and ~~such~~ any other information the department ~~deems~~ considers necessary to determine if the proposed area to be affected by the operation is appropriate for the location of a new strip mine or a new underground mine. The department may require any information included in but not limited to an application for a strip-mining permit or underground-mining permit as required by part 2 of this chapter.

(2) ~~The~~ Except as provided in [section 1(4)(b)], the department shall notify the applicant within 365 days of receipt of a complete application if the proposed site is an acceptable location for development of a new strip mine or a new underground mine. If the site is approved, the department shall issue the applicant a mine-site location permit. If the location is not approved, the department shall notify the applicant in writing, setting forth reasons why the location is not acceptable. The department shall also notify the applicant within 365 days of receipt of a complete application whether the proposed reclamation plan is or is not acceptable. If the plan is not acceptable, the department shall set forth the reasons for nonacceptance of the plan. It may propose modifications, delete areas, or reject the entire plan."

Section 11. Section 82-4-231, MCA, is amended to read:

"**82-4-231. Submission of and action on reclamation plan.** (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and a reclamation plan for the area of land affected by the operation. In developing a method of operation and plans of backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, and reclamation, all measures ~~shall~~ must be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan ~~shall~~ must set forth in detail the manner in which the applicant intends to comply with this section and 82-4-232 through 82-4-234, as amended, and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for permit or major revision of a permit, which ~~shall~~ must contain the reclamation plan, ~~shall~~ must be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items ~~which~~ that the application must address. The application ~~shall be~~ is presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to

subsection (4).

(6) After the applicant receives notice that the application is administratively complete, the applicant shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest ~~which~~ that is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority ~~shall have the right to~~ may file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons ~~therefor~~ for its decision within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference ~~shall~~ may not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined to be necessary prior to making a permit decision, the department shall complete and publish the final environmental impact statement within 365

days of the date of notice provided pursuant to subsection (5).

(d) ~~Within~~ Except as provided in [section 1(4)(b)], within 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. ~~If~~ Except as provided in [section 1(4)(b)], if the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons therefor within 10 days of the informal conference.

(f) ~~The~~ Except as provided in [section 1(4)(b)], the department shall prepare written findings granting or denying the permit or major revision application in whole or in part no later than 45 days from the date the application is determined acceptable or from the publication of the final environmental impact statement, whichever occurs later. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when ~~such~~ the concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall

immediately notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing ~~shall~~ must be held within 30 days of the request. For purposes of a hearing, the department may order site inspections of the area pertinent to the application. The department shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. No person who presided at the informal conference may either preside at the hearing or participate in the decision thereon.

(10) In addition to the method of operation, grading, backfilling, subsidence stabilization, water control, highwall reduction, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1) of this section, shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the department approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant ~~must~~ is required to show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health, or constitute a hazard to domestic livestock or to a viable agricultural operation, or violate any other restrictions the department may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in ~~such~~ a manner as to prevent or minimize land subsidence. The remaining waste material ~~shall~~ must be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of ~~such~~ those resources where practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface water and ground water systems both during and after strip- or underground-coal-mining operations and during reclamation by:

(i) avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but ~~in no event shall~~ contributions may not be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement of strip- or underground-mining operations, ~~such~~ with the structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(vii) ~~such~~ any other actions as the department may prescribe;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except ~~where~~ when the department determines that the resulting impoundment of water in ~~such~~ the auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in ~~such~~ proximity to ~~such~~ the channel so as to seriously alter the normal flow of water;

(q) meet ~~such~~ other criteria as are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under 82-4-223, as amended, or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in such a manner as to protect areas outside the permit area."

Section 12. Section 82-4-337, MCA, is amended to read:

"**82-4-337. Inspection -- issuance of operating permit -- modification, amendment, or revision.** (1) (a) The department shall review all applications for operating permits for completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b). The department shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within the appropriate review period.

(b) ~~Unless~~ Except as provided in [section 1(4)(b)], unless the review period is extended as provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the department does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within the time period, the operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond that will be required.

(c) A permit may not be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) the information and certification have been submitted pursuant to 82-4-335(9); and

(iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(7).

(d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible because of extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall serve written notice of extension upon the applicant in person or by certified

mail, and any extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) ~~If~~ Except as provided in [section 1(4)(b)], if the department determines that additional time is needed for analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.

(iii) ~~If~~ Except as provided in [section 1(4)(b)], if the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review. The applicant may by written waiver extend this time period.

(iv) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(v) Failure of the department to act upon a complete application within the extension period constitutes approval of the application, and the permit must be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the department as provided in this part.

(3) The operating permit must provide that the reclamation plan may be modified by the department, upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so that they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

(4) During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

(5) Applications for major amendments must be processed in the same manner as applications for new permits.

(6) Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The board may by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

(7) If the department demonstrates that a revision may result in a significant environmental impact that was not previously and substantially evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. ~~Applications~~ Except as provided in [section 1(4)(b)], applications for minor amendments and other revisions must be processed within 30 days of receipt of an application."

Section 13. Section 82-4-432, MCA, is amended to read:

"**82-4-432. Application for permit -- contents -- issuance -- amendment.** (1) Applications for a permit must be made upon a form furnished by the department. The form must contain the following:

(a) the name of the operator and, if other than the owner of the land, the name and address of the owner;

(b) the type of operation to be conducted;

(c) the volume of earth to be removed, as accurately as the volume may then be estimated, and the volume that has been previously removed, if any;

(d) the location of the operation by legal subdivision, section, township and range, and county;

(e) the date when the operation was or will be commenced; and

(f) a statement that the applicant has the right and power by legal estate owned to mine by opencut mining the lands described.

(2) The application must be accompanied by:

(a) a bond or security meeting the requirements as set out in this part;

(b) a fee of $50 for an application to mine bentonite, clay, scoria, sand, or gravel;

(c) a statement from the local governing body having jurisdiction over the area to be mined certifying that a proposed sand and gravel opencut mine and its operating and reclamation plans comply with applicable local zoning regulations adopted under Title 76, chapter 2; and

(d) the operator's plan of operation and a complete reclamation plan.

(3) If, prior to applying for a permit, a person notifies the department of the intention to submit an application and requests the department to examine the area to be mined, the department shall cause the area to be examined and make recommendations to the person regarding reclamation. The person may request a meeting with the department. The department shall hold a meeting if requested.

(4) ~~Upon~~ Except as provided in [section 1(4)(b)], upon receipt of a complete application containing all items listed in subsections (1) and (2), the department shall, within 30 days, notify the person if it has approved or denied the application. The department may for sufficient cause extend its period of review for an additional 30 days if it notifies the person of the extension prior to the end of the original 30-day period. Upon approval of the application, the department shall issue a permit to the operator that entitles the operator to continue or engage in opencut mining on the land described in the application.

(5) An operator desiring to have a permit amended to cover additional contiguous or nearby land may file an amended application with the department. Upon receipt of the amended application and any additional bond as may be required and upon agreement to the terms of the amendment by the parties, the department may issue an amendment to the original permit covering the additional land described in the amended application without the payment of any additional fee.

(6) An operator may withdraw any land covered by a permit, except affected land, by notifying the department of the withdrawal, in which case the penalty of the bond or security filed by the operator pursuant to the provisions of this part must be reduced proportionately."

Section 14. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 75, chapter 1, part 2, and the provisions of Title 75, chapter 1, part 2, apply to [sections 1 and 2].

Section 15. Coordination instruction. (1) If Senate Bill No. 408 is not passed and approved

containing language that authorizes a board review of an agency significance determination, then the reference to Senate Bill No. 408 in [section 1(4)(b) of this act] is void.

(2) If House Bill No. 459 is not passed and approved containing language that authorizes a board review of an agency alternative analysis determination, then the reference to House Bill No. 459 in [section 1(4)(b) of this act] is void.

(3) If House Bill No. 473 and [this act] are both passed and approved, then [section 2(3)] of House Bill No. 473, defining "project sponsor", is void.

(4) If House Bill No. 459 and [this act] are both passed and approved, then [section 2(3)] of House Bill No. 459, defining "project sponsor", is void.

Section 16. Applicability. [This act] applies to environmental reviews that are begun after [the effective date of this act].

- END -